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**Vol. II**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1938**

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**No. 772**

H. P. HOOD & SONS, INC., AND NOBLE'S MILK  
COMPANY, PETITIONERS,

*vs.*

THE UNITED STATES OF AMERICA AND HENRY  
A. WALLACE, SECRETARY OF AGRICULTURE

**PETITION FOR CERTIORARI FILED MARCH 24, 1939.**

**CERTIORARI GRANTED MARCH 27, 1939.**

---

**No. 865**

E. FRANK BRANON, PETITIONER,

*vs.*

THE UNITED STATES OF AMERICA AND HENRY  
A. WALLACE, SECRETARY OF AGRICULTURE

**PETITION FOR CERTIORARI FILED APRIL 12, 1939.**

**CERTIORARI GRANTED APRIL 17, 1939.**

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ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE FIRST CIRCUIT

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UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIRST CIRCUIT.

OCTOBER TERM, 1938.

No. 3445.

H. P. HOOD & SONS, Inc., ET AL.,  
DEFENDANTS, APPELLANTS,

v.

UNITED STATES OF AMERICA ET AL.,  
PLAINTIFFS, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE DISTRICT OF MASSACHUSETTS,  
FROM FINAL DECREE (SWEENEY, J.), MARCH 9, 1939.

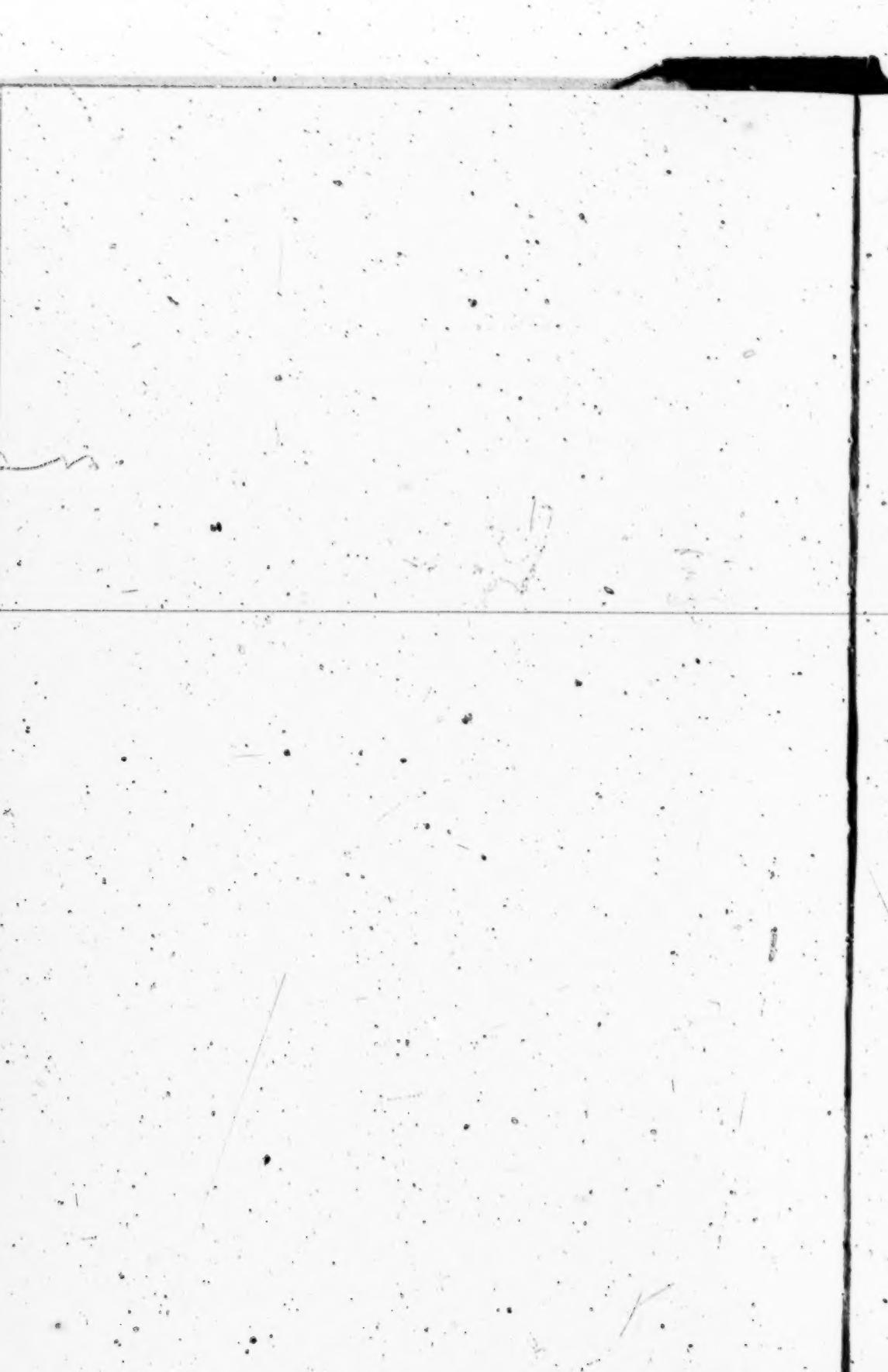
TRANSCRIPT OF RECORD.

VOLUME II.

REPORT OF SPECIAL MASTER.  
(FINDINGS OF FACTS.)

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*for Appellees.*



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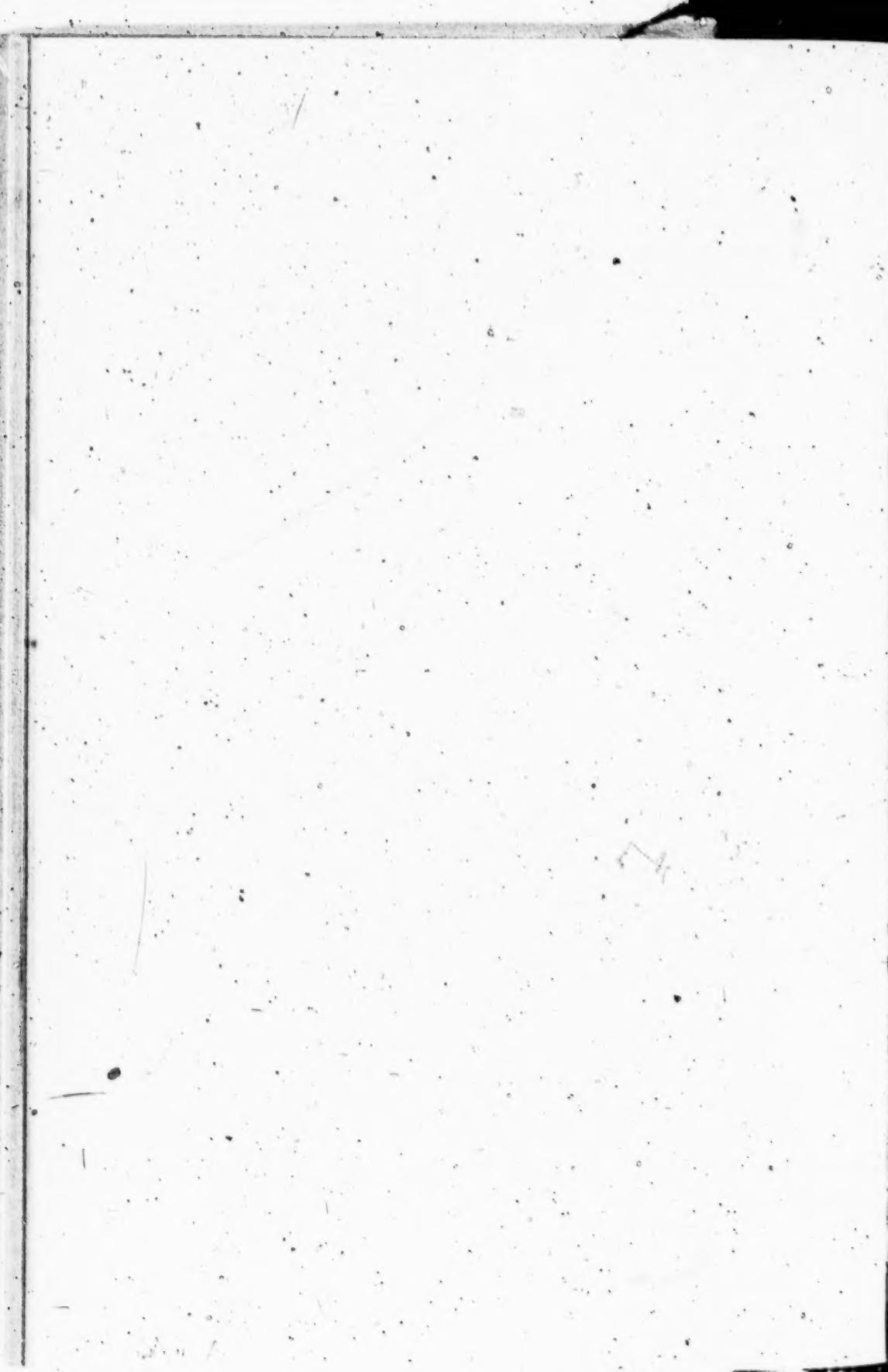
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In the District Court of the United States  
for the District of Massachusetts

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No. 4519

UNITED STATES ET AL.

v.

H. P. HOOD & SONS, INC., AND NOBLE'S MILK COMPANY

---

No. 4520

SAME v. THE WHITING MILK COMPANY

---

No. 4521

SAME v. W. P. ELLIOTT COMPANY

---

No. 4522

SAME v. GREEN VALLEY CREAMERY, INC.

---

No. 4529

SAME v. F. W. LAROE AND JOHN E. BURR

---

No. 4530

SAME v. A. J. ROBINSON

---

No. 4539

SAME v. WHITCOMB FARMS, INC.

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No. 4540

SAME v. A. J. McNEIL & SONS

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No. 4543

SAME v. WM. T. JONES COMPANY

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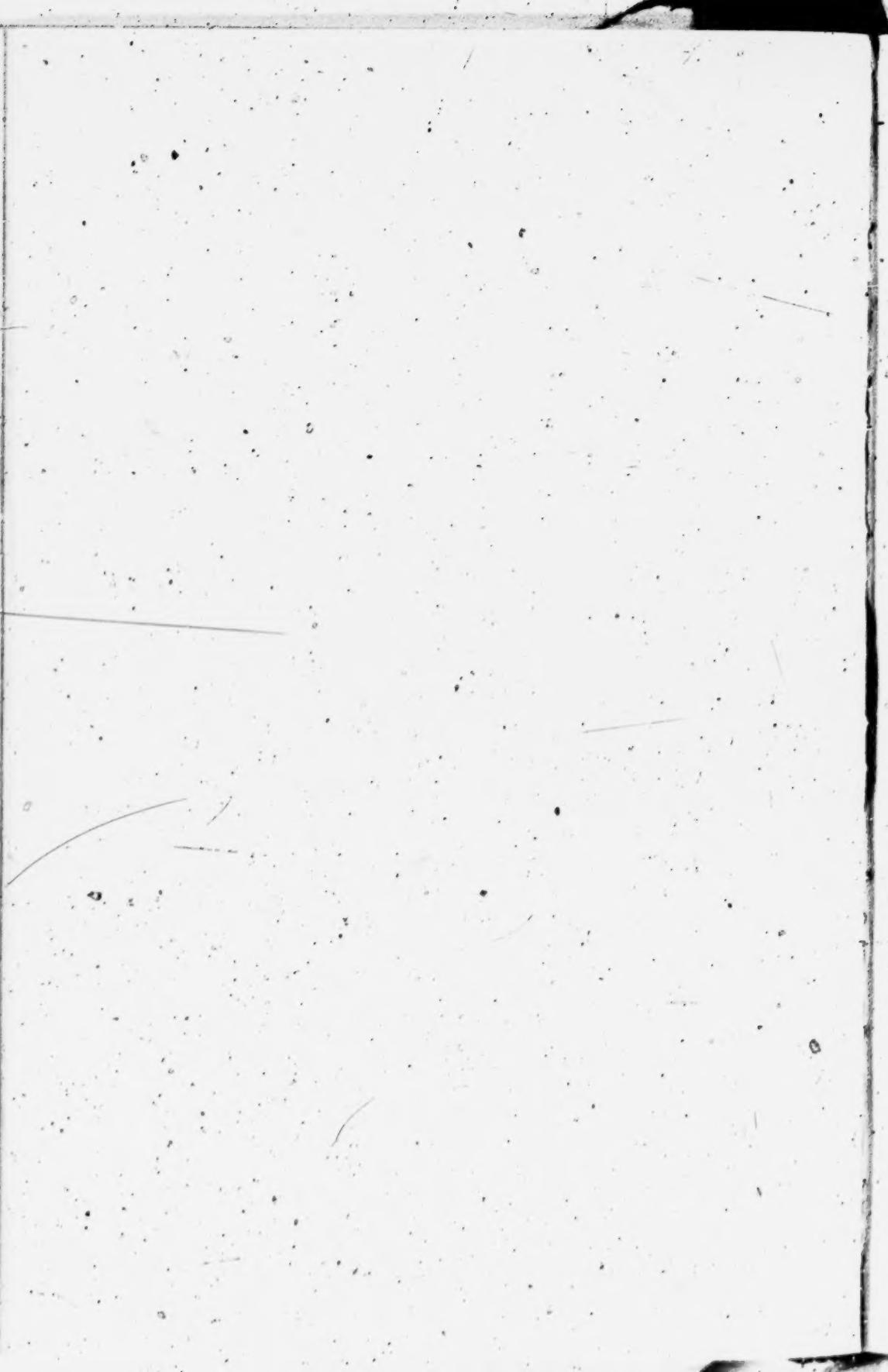
No. 4544

SAME v. WESTWOOD FARM MILK COMPANY

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No. 4550

SAME v. MASON'S CREAMERY COMPANY



## MASTER'S REPORT

These are thirty suits in equity, which were brought under the provisions of Section 8a (6) of the Agricultural Marketing Agreement Act of 1937 (Act of May 12, 1933, 48 Stat. 31; 7 U.S.C.A. Section 608a (6), as amended August 24, 1935, 49 Stat. 672, and as reenacted and amended June 3, 1937, Chapter 296, 50 Stat. 246). These suits seek to compel compliance by the various defendants with an order of the Secretary of Agriculture issued February 7, 1936 as amended by an order of the Secretary issued July 28, 1937 relating to the marketing of milk in the city of Boston and in various cities and towns in its vicinity. The defendants are dealers in or handlers of milk in the area described in the Secretary's order as the "Greater Boston Marketing Area." as hereinafter defined.

Whenever the words "Greater Boston, Massachusetts, Marketing Area as defined by Order No. 4" or "as defined by Order No. 4 as amended" or "Greater Boston Marketing Area as defined by Order No. 4" or "as defined by Order No. 4 as amended" or "Marketing Area as defined by Order No. 4" or "as defined by Order No. 4 as amended" or "as defined in the order" are used in these findings, they shall be taken to designate the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, Massachusetts.

The provisions of the Order as amended are described in greater detail below, but in general they require all handlers in the area to pay for their milk at certain prices set up by the Order, which vary according to the use made of the milk by the handler, and provide for "equalization" of all such sums so as to effect the payment to all producers who

supplied the area of a uniform price for their milk. The Order as amended provided that it should become effective August 1, 1937.

The cases were referred to me as Special Master by order of the District Court dated December 23, 1937 wherein I was directed to hear the parties and their evidence and to make and report to the Court my findings of fact. Hearings were held according to the order beginning on January 4 and concluding on April 28, 1938. Over 4200 pages of testimony were taken and 474 exhibits, some of them over 600 pages long, were offered in evidence. I hereby make the following report of my findings.

## PART ONE

### THE PROMULGATION AND AMENDMENT OF ORDER NO. 4

#### *I. The Promulgation of Order No. 4*

1. On November 30, 1935, the Secretary of Agriculture gave notice of a public hearing on a proposed marketing agreement and a proposed order regulating the handling of milk in the marketing area. A copy of the notice follows:

WHEREAS, under the Agricultural Adjustment Act, as amended, notice of hearing is required in connection with a proposed marketing agreement or a proposed order, and the General Regulations, Series A, No. 1, of the Agricultural Adjustment Administration provide for such notice; and

WHEREAS, representatives of certain producers have filed written applications requesting the Secretary to call a hearing on a proposed marketing agreement for the consideration of the producers and the handlers of milk in the Greater Boston Marketing Area, said agreement to be executed pursuant to section 8b of the act, as amended;

Now, THEREFORE, pursuant to the said act and said general regulations, notice is hereby given of a hearing to be held on a proposed marketing agreement and a

proposed order, regulating the handling of milk in the Greater Boston Marketing Area, in the State Armory on Main St., St. Johnsbury, Vermont, on December 10, 1935, and at the Gardner Auditorium, State House, Boston, Massachusetts, on December 12, 1935, at 9:30 a.m. and thereafter until concluded.

This public hearing is for the purpose of receiving evidence as to the general economic conditions which may necessitate regulation in order to effectuate the declared policy of the act and as to the specific provisions which a marketing agreement and order should contain.

The proposed marketing agreement and order provide for the regulation of the handling of milk in the Greater Boston Marketing Area, as defined in said agreement and order, and, among other things, provision is made for: (a) appointment of a market administrator, (b) classification of milk, (c) minimum price schedule, (d) equalization of the cost of milk among producers, (e) establishing of the base rating of producers, (f) deductions for administrative expenses and marketing service charges, (g) assurance of payment to producers, and (h) reports of handlers.

Copies of the proposed marketing agreement and proposed order may be inspected in or procured from the office of the Hearing Clerk, Room 4725, South Building, United States Department of Agriculture, Washington, D. C.

It is hereby declared that an emergency exists in the handling of milk in the aforesaid area, which requires a shorter period of notice than fifteen (15) days; and it is hereby determined that the period of notice given is reasonable under the circumstances.

/s/ H. A. WALLACE  
Secretary.

Dated: November 30, 1935.  
Washington, D. C.

2. Public hearings were held on December 10 and 11, 1935, at St. Johnsbury, Vermont, and on December 12, 1935, at Boston, Massachusetts. At the hearings interested parties were afforded an opportunity to introduce evidence and to be heard on the proposed marketing agreement and the proposed order. All of the testimony received at the said hearings was reduced to writing. A certified copy of the testimony and exhibits received at the said hearings and certain documents forwarded to the Secretary by interested parties after the close of the said hearings was introduced in evidence before me as constituting the material before the Secretary at the time of the promulgation of Order No. 4 and is attached to this report as Appendix A and made a part hereof.

3. On January 18, 1936, the Secretary of Agriculture tentatively approved a marketing agreement and thereafter handlers of more than 50% of the volume of milk covered by Order No. 4 (as hereinafter defined) failed to sign the tentatively approved marketing agreement.

4. On January 25, 1936, the Secretary of Agriculture made and issued the following finding and proclamation:

**PROCLAMATION MADE BY THE SECRETARY OF AGRICULTURE  
CONCERNING THE BASE PERIOD TO BE USED IN CONNECTION  
WITH THE EXECUTION OF A MARKETING AGREEMENT  
AND THE ISSUANCE OF AN ORDER REGULATING THE HANDLING  
OF MILK IN THE GREATER BOSTON, MASSACHUSETTS,  
MARKETING AREA.**

United States Department of Agriculture,  
Office of the Secretary.

By virtue of the authority vested in the Secretary of Agriculture by the Agricultural Adjustment Act, approved May 12, 1933, as amended, the Secretary of Agriculture does hereby find and proclaim that in connection with the execution of a marketing agreement and the issuance of an order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, the purchasing power of such milk during the

base period August 1909 to July 1914 cannot be satisfactorily determined from available statistics in the Department of Agriculture, but that the purchasing power of such milk can be satisfactorily determined from available statistics in the Department of Agriculture for the period August 1919 to July 1929; and the period August 1919 to July 1929 is hereby found and proclaimed to be the base period to be used in connection with ascertaining the purchasing power of milk handled in the Greater Boston, Massachusetts, Marketing Area, for the purpose of the execution of a marketing agreement and the issuance of an order regulating the handling of said milk in that area.

IN TESTIMONY WHEREOF, the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 25th day of January, 1936.

/s/ H. A. WALLACE  
Secretary of Agriculture.

5. On February 5, 1936, the Secretary of Agriculture made and issued the following determination which was approved by the President of the United States on February 6, 1936, as shown below:

**DETERMINATION OF THE SECRETARY OF AGRICULTURE WITH  
RESPECT TO A PROPOSED ORDER REGULATING THE HANDLING  
OF MILK IN THE GREATER BOSTON, MASSACHUSETTS,  
MARKETING AREA.**

WHEREAS, the Secretary of Agriculture, pursuant to Sections 8b and 8c of Title 1 of the Agricultural Adjustment Act, approved May 12, 1933, as amended, herein-after called the Act, having reason to believe that the issuance of a marketing agreement and order with respect to the handling of milk in the Greater Boston, Massachusetts, Marketing Area would tend to effectuate the declared policy to establish and maintain

such marketing conditions in the handling of milk in the aforesaid area as would reestablish prices of milk to producers of milk in said area at a level that would give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of milk in the base period, August 1919—July 1929, gave, on the 30th day of November, 1935, notice of a hearing, which was held on the tenth and eleventh days of December, 1935, at St. Johnsbury, Vermont, and on the twelfth day of December, 1935, at Boston, Massachusetts, on a proposed marketing agreement and a proposed order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, at which times and places all interested parties were afforded an opportunity to be heard on the proposed marketing agreement and the proposed order; and

WHEREAS after such hearing and after the tentative approval by the Secretary of a marketing agreement on the 18th day of January, 1936, handlers of more than fifty per centum of the volume of milk, covered by such proposed order, which is produced or marketed within the Greater Boston, Massachusetts, Marketing Area, refused or failed to sign such marketing agreement relating to milk;

NOW THEREFORE, the Secretary of Agriculture, by virtue of the authority vested in him by the act, does hereby determine:

1. That the refusal or failure of said handlers to sign the said marketing agreement tends to prevent the effectuation of the declared policy to establish and maintain such marketing conditions in the handling of milk in the aforesaid area as will reestablish prices of milk to producers of milk in said area at a level that will give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of such milk in the base period, August 1919—July 1929; and

2. That the issuance of the proposed order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area; and
3. That the issuance of the proposed order is approved or favored by over seventy-five (75) per centum of the producers who, during the month of November, 1935, said month being here and now determined by the Secretary to be a representative period, have been engaged in the production of milk for sale in the said area.

IN WITNESS WHEREOF, I, *H. A. Wallace*, Secretary of Agriculture, have executed this determination and have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 5th day of *February* 1936.

H. A. WALLACE  
Secretary of Agriculture

Approved:

FRANKLIN D. ROOSEVELT  
President of the United States

Dated: *February 6, 1936.*

6. On February 7, 1936, R. G. Tugwell, Acting Secretary of Agriculture, made certain findings and set forth the said findings in an order regulating the handling of milk in the marketing area which the said R. G. Tugwell, Acting Secretary of Agriculture, promulgated on the same date. (The said order being hereinafter referred to as "Order No. 4.") The said findings and order were in the following form:

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL ADJUSTMENT ADMINISTRATION

## Order Series—Order No. 4

ORDER REGULATING THE HANDLING OF MILK IN THE  
GREATER BOSTON, MASSACHUSETTS,  
MARKETING AREA

Issued by the Secretary of Agriculture February 7, 1936

Effective 12:01 a. m., E. S. T.,

February 9, 1936

Whereas, by Section 8b of Title I of the Agricultural Adjustment Act, approved May 12, 1933, as amended, hereinafter called the act, the Secretary of Agriculture is empowered, after due notice and opportunity for hearing, to enter into marketing agreements with processors, producers, associations of producers and others engaged in such handling of any agricultural commodity or product thereof as is in the current of interstate or foreign commerce, or which directly burdens, obstructs or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, by Section 8c (1) of the act the Secretary of Agriculture is empowered to issue orders applicable to processors, association of producers and others engaged in the handling of any agricultural commodity or product thereof specified in subsection (2) of section 8c, such orders to regulate only such handling of such agricultural commodity or product thereof as is in the current of interstate or foreign commerce, or which directly burdens, obstructs or affects interstate or foreign commerce in such commodity or product thereof; and

Whereas, the Secretary of Agriculture, having reason to believe that the issuance of a marketing agreement and order with respect to the handling of milk in the Greater Boston, Massachusetts, Marketing Area would tend to effectuate the declared policy to establish and maintain such marketing conditions in the handling

of milk in the aforesaid area as would reestablish prices of milk to producers of milk in said area at a level that would give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of milk in the base period, August 1919—July 1929, gave, on the 30th day of November 1935, notice of a hearing, which was held on the tenth and eleventh days of December 1935 at St. Johnsbury, Vermont and on the twelfth day of December 1935 at Boston, Massachusetts, on a proposed marketing agreement and a proposed order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, at which times and places all interested parties were afforded an opportunity to be heard on the proposed marketing agreement and the proposed order; and

*Whereas*, after such hearing and after the tentative approval by the Secretary of a marketing agreement on the 18th day of January 1936, handlers of more than 50 per centum of the volume of milk, covered by this order, which is marketed within the Greater Boston, Massachusetts, Marketing Area, refused or failed to sign such marketing agreement relating to milk; and

*Whereas*, the Secretary determined, on the 5th day of February 1936, said determination being approved by the President of the United States on the 6th day of February 1936, that said refusal or failure tends to prevent the effectuation of the declared policy to establish and maintain such marketing conditions in the handling of milk in the aforesaid area as would reestablish prices of milk to producers of milk in said area at a level that would give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of such milk in the base period, August 1919—July 1929, and that the issuance of this order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area and is approved or favored by over seventy-

five per cent of the producers who, during the month of November 1935, said month being determined by the Secretary to be a representative period, have been engaged in the production of milk for the sale in the Greater Boston, Massachusetts, Marketing Area; and

*Whereas*, on the 25th day of January 1936, the Secretary found and proclaimed that the purchasing power of milk handled in the Greater Boston, Massachusetts, Marketing Area could not be satisfactorily determined from available statistics of the United States Department of Agriculture during the base period August 1909 to July 1914, but that the purchasing power of said milk could be satisfactorily determined from available statistics of the Department of Agriculture during the period August 1919—July 1929, and, on the same date, found and proclaimed the period August 1919—July 1929 to be the base period to be used in connection with ascertaining the purchasing power of milk handled in the Greater Boston, Massachusetts, Marketing Area; and

*Whereas*, the Secretary finds, upon the evidence introduced at the aforementioned hearings:

1. That in 1934, 90.8 per cent of the total volume of milk sold in the Greater Boston, Massachusetts, Marketing Area, originated in states other than Massachusetts and entered into the current of interstate commerce; that the milk originating in the State of Massachusetts is inextricably intermingled with that milk which is in the current of interstate commerce, and in such a manner that it is impossible to regulate that milk originating in states other than Massachusetts without regulating that milk which originates in the State of Massachusetts and which enters the current of interstate commerce; and that the handling of milk in the Greater Boston, Massachusetts, Marketing Area is in the current of interstate commerce, or directly burdens, obstructs or affects interstate commerce.

2. That the classification of milk into two classes follows a custom of long-standing in the market and is an economically justifiable method of classifying milk;
3. That the prices received by producers for milk sold in the marketing area were, for a long time prior to said hearings, at a level that gave such milk a purchasing power with respect to articles that producers buy considerably below the purchasing power in the base period; that the prices established in this order will, over a period of time, tend to give such milk a purchasing power with respect to articles that producers buy equivalent to the purchasing power of such milk in the base period; that the establishment of such prices does not have for its purpose the maintenance of prices to producers above the level which is declared in the act to be the policy of Congress to establish; that the differential in prices to associations of producers, and producers, is justified as a reasonable allowance for services actually performed by associations of producers; that the differential in price between milk delivered from producers' farms to handlers' plants located not more than forty miles from the State House in Boston and to plants located more than forty miles from the State House in Boston is a reasonable allowance for the extra handling costs incurred by handlers operating country station plants; and that the method provided for determining the class II price is a method which bears a reasonable relationship to the price of cream in the above market;
4. That the determination of uniform prices to producers and the payment of such prices through a market-wide equalization pool founded upon a base-rating plan is a fair and reasonable method of distributing to producers the proceeds of sales to handlers; that the country station, transportation, butter fat and other differentials are proper differentials to be used in calculating such prices; that the payment of class I prices for the bases of producers whose farms are within forty

miles of Boston is a proper recognition of the economic position of such producers, due to the greater availability of their milk for class I use; and that the method of calculating the bases of all producers is a fair and reasonable method;

5. That the Greater Boston, Massachusetts, Marketing Area, as defined in the order, is the natural marketing area, within which Boston handlers distribute the aforesaid milk;

6. That the market administrator is a proper agency to administer the order and that the powers granted to, and duties specified for, such market administrator in the order are necessary for the administration of the terms and provisions of the order;

7. That the deduction of a sum not exceeding 2¢ per hundredweight is a proper deduction as each handler's pro rata share of the expenses of the administration hereof;

8. That the expenses which the market administrator will necessarily incur during the twelve-month period immediately following the effective date of this order, for the maintenance and functioning of such market administrator, will be approximately \$135,000;

9. That the reports required of handlers by this order are reasonably necessary for the proper administration of the order;

10. That the deduction of 5¢ per hundredweight from payments made to producers, except those producers for whom a duly qualified association is actually performing services, is a proper deduction for such services rendered by the market administrator for market information to such producer, and for verification of weights, sampling and testing of milk;

11. That the furnishing of security by handlers to the market administrator for payments to be made by each handler is necessary in order to insure the payment to producers of the minimum prices specified in this order;

12. That the order regulates the handling of milk in the same manner as, and is applicable only to handlers specified in the marketing agreement mentioned above, upon which hearings have been held;

13. That all the remaining provisions of this order are necessary to effectuate the other provisions of the order; and

14. That the issuance of this order and all of the terms and conditions hereof will tend to effectuate the declared policy to establish and maintain such marketing conditions in the handling of milk in the aforesaid area as will reestablish prices of milk to producers of milk in said area at a level that will give such milk a purchasing power with respect to articles that such producers buy equivalent to the purchasing power of milk in the base period, August 1919—July 1929;

Now, THEREFORE, the Secretary of Agriculture, pursuant to the authority vested in him by the act, hereby orders that such handling of milk in the Greater Boston, Massachusetts, Marketing Area as is in the current of interstate or foreign commerce, or which directly burdens, obstructs or affects interstate or foreign commerce shall, from the effective date hereof, be in conformity to; and in compliance with, the following terms and conditions:

#### ARTICLE I—DEFINITIONS

SECTION 1. *Terms.*—The following terms shall have the following meanings:

1. "Act" means the Agricultural Adjustment Act approved May 12, 1933, as amended.

2. "Secretary" means the Secretary of Agriculture of the United States.

3. "Greater Boston, Massachusetts, Marketing Area", hereinafter called the "Marketing Area", means the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea,

Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop and Woburn, Massachusetts.

4. "Person" means an individual, partnership, corporation, association and any other business unit.

5. "Producer" means any person, irrespective of whether any such person is also a handler, who produces milk in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the Marketing Area.

6. "Handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the Marketing Area, as is in the current of interstate or foreign commerce or which directly burdens, obstructs or affects interstate or foreign commerce in milk and its products.

7. "Market Administrator" means the person designated pursuant to article II as the agency for the administration hereof.

8. "Delivery period" means the current marketing period from the first to, and including, the fifteenth day of each month, and from the sixteenth to, and including, the last day of each month.

9. "Base" means the quantity of milk calculated for each producer pursuant to section 4 of article VII.

#### ARTICLE II—MARKET ADMINISTRATOR

SECTION 1. *Selection, Removal and Bond.*—The Market Administrator shall be selected by the Secretary and shall be subject to removal by him at any time. The Market Administrator shall, within forty-five (45) days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned

upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

SEC. 2. *Compensation.*—The Market Administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

SEC. 3. *Powers.*—The Market Administrator shall have power:

1. To administer the terms and provisions hereof;
2. To receive, investigate and report to the Secretary complaints of violations of the terms and provisions hereof.

SEC. 4. *Duties.*—The Market Administrator, in addition to the duties hereinafter described, shall:

1. Keep such books and records as will clearly reflect the transactions provided for herein;
2. Submit his books and records to examination by the Secretary at any and all times;
3. Furnish such information and such verified reports as the Secretary may request;
4. Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator;
5. Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within fifteen days after the date upon which he is required to perform such acts, has not (a) furnished security pursuant to article XI, (b) made reports pursuant to article V or (c) made payments pursuant to article VIII;
6. Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; and
7. Pay, out of the funds provided by article X, (a) the cost of his bond and of the bonds of such of his employees as handle funds entrusted to the Market Administrator, (b) his own compensation and (c) all other expenses which will necessarily be incurred by him for

the maintenance and functioning of his office and the performance of his duties.

SEC. 5. *Responsibility.*—The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance or dishonesty.

### ARTICLE III—CLASSIFICATION OF MILK

SECTION 1. *Sales and Use Classification.*—Milk purchased or handled by handlers shall be classified as follows:

1. All milk sold or distributed as milk, chocolate milk or flavored milk and all milk not specifically accounted for as Class II milk shall be Class I milk; and

2. Milk specifically accounted for (a) as being sold, distributed or disposed of other than as milk, chocolate milk or flavored milk and (b) as actual plant shrinkage within reasonable limits shall be Class II milk.

SEC. 2. *Inter-Handler Sales.*—Milk, including skim milk, sold by a handler to another handler shall be presumed to be Class I milk; provided, that, if such selling handler, on or before the date fixed for filing reports pursuant to article V, shall furnish proof satisfactory to the Market Administrator that such milk, or part thereof, has been sold or used by the purchasing handler other than as Class I milk, then and in that event, such milk, or part thereof, shall be classified as Class II milk.

SEC. 3. *Delivery of Class I Milk.*—The milk which was sold or distributed by each handler as Class I milk shall be presumed to have been that milk which was delivered to such handler at plants within and nearest to the Marketing Area; provided, that, if such handler can show that such presumption will result in an unreasonable allocation as to Class I milk actually delivered to him outside the Marketing Area, the Market

Administrator may determine and make public a different basis of allocation than would otherwise be allowed by this section.

#### ARTICLE IV—MINIMUM PRICES

**SECTION 1. *Class I Prices to Associations of Producers.***—Each handler shall pay any association of producers for Class I milk containing 3.7 percent butterfat, subject to the butterfat differential set forth in section 3 of article VIII, not less than the following prices:

1. \$3.42 per hundredweight for such milk delivered from the plant of such association to such handler's plant located not more than forty (40) miles from the State House in Boston; and
2. \$3.37 per hundredweight for such milk delivered from the plant of such association to such handler at a railroad delivery point not more than forty (40) miles from the State House in Boston.

**Sec. 2. *Class I Prices to Producers.***—Each handler shall pay producers, in the manner set forth in article VIII, for Class I milk delivered by them, not less than the following prices:

1. \$3.30 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than forty (40) miles from the State House in Boston;
2. \$3.09 per hundredweight for such milk delivered from producers' farms to such handler's plant located more than forty (40) miles from the State House in Boston, less an amount per hundredweight equal to the freight from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the Marketing Area. Such freight shall be calculated according to applicable rail tariffs for the transportation in carload lots of milk in forty-quart cans and each such can shall be considered to contain 85 pounds of milk.

SEC. 3. *Class II Prices.*—Each handler shall pay producers, in the manner set forth in article VIII, for Class II milk not less than the following prices per hundred-weight:

1. In the case of such milk delivered to a handler's plant located not more than forty (40) miles from the State House in Boston, a price which the Market Administrator shall calculate as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston-market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, multiply the result by 3.7, add 10 cents and subtract 23 cents; and
2. In the case of such milk delivered to a handler's plant located more than forty (40) miles from the State House in Boston, the price calculated by the Market Administrator, pursuant to paragraph 1 of this section, minus six (6) cents.

SEC. 4. *Sales Outside the Marketing Area.*—The price to be paid by each handler to associations of producers or to producers, in the manner set forth in article VIII, for milk utilized as Class I milk outside the Marketing Area, shall be the price applicable pursuant to sections 1 and 2 of this article adjusted by (a) the difference between such applicable price and the price ascertained by the Market Administrator as the prevailing price paid by processors for milk of equivalent use in the market where such Class I milk is utilized and (b) the difference between the freight allowance, if any, set forth in paragraph 2 of section 2 of this article and an amount equal to the earload freight rate approved by the Interstate Commerce Commission for movement of milk in 40-quart cans from the shipping point for the plant where such Class I milk is received from producers to the railroad delivery point serving the market where such Class I milk is sold; provided, that (1) if the market where such Class I milk is utilized is less

than ten (10) miles from the plant where such Class I milk is received from producers, the railroad shipping point for such plant shall be presumed to be the railroad delivery point serving such market, and (2) if the market where such Class I milk is utilized is located in Barnstable, Plymouth, Norfolk, Dukes and Nantucket counties, Massachusetts, such handler's railroad delivery point in the Marketing Area shall be considered to be the railroad delivery point serving such market.

SEC. 5. *Publication of Class II Price.*—On or before the fifth day after the end of each delivery period, the Market Administrator shall publicly announce the Class II price in effect for such delivery period.

#### ARTICLE V—REPORTS OF HANDLERS

SECTION 1. *Periodic Reports.*—On or before the eighth day after the end of each delivery period, each handler shall, except as set forth in section 1 of article VI, with respect to milk or cream which was, during such delivery period, (a) received from producers, (b) received from handlers or (c) produced by such handler, report to the Market Administrator, in the detail and form prescribed by the Market Administrator, as follows:

1. The receipts at each plant from producers who are not handlers and the total quantity of such receipts which represents milk delivered by producers in excess of their individual bases;
2. The receipts at each plant from any other handler, including any handler who is also a producer;
3. The quantity, if any, produced by such handler; and
4. The respective quantities of milk which were sold, distributed or used, including sales to other handlers, for the purpose of classification pursuant to article III.

SEC. 2. *Reports as to Producers.*—Each handler shall report to the Market Administrator:

1. Within ten (10) days after the Market Administrator's request with respect to any producer for whom such information is not in the files of the Market Administrator, and with respect to a period or periods of time designated by the Market Administrator, (a) the name and address, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered and (d) the number of days upon which deliveries were made; and

2. As soon as possible after first receiving milk from any producer: (a) the name and address of such producer, (b) the date upon which such milk was first received, (c) the plant at which such producer delivered milk and (d) the plant, if known, at which such producer delivered milk immediately prior to the beginning of delivery to such handler.

SEC. 3. *Reports of Payments to Producers.*—Each handler shall submit to the Market Administrator within thirty (30) days after the end of each delivery period his producer payroll for such delivery period which shall show for each producer: (a) the total delivery of milk with the average butterfat test thereof, (b) the portion of such delivery which was in excess of the base of such producer and (c) the net amount of such producer's payment, with the prices, deductions and charges involved.

SEC. 4. *Outside Cream Purchases.*—Each handler shall report, as requested by the Market Administrator, his purchases, if any, of bottling quality cream from handlers who receive no milk from producers, showing the quantity and the source of each such purchase and the cost thereof at Boston.

SEC. 5. *Verification of Reports.*—In order that the Market Administrator may submit verified reports to the Secretary pursuant to paragraph 3 of section 4 of article II, each handler shall permit the Market Administrator or his agent, during the usual hours of business, to (a) verify the information contained in reports sub-

mitted in accordance with this article and (b) weigh, sample and test milk for butterfat.

#### ARTICLE VI—HANDLERS WHO ARE ALSO PRODUCERS

**SECTION 1. *Application of Provisions.***—No provision hereof shall apply to a handler who is also a producer and who purchases no milk from producers or an association of producers, except that such handler shall make reports to the Market Administrator at such time and in such manner as the Market Administrator may request.

**SEC. 2. *Milk Purchased from Producers.***—In the case of a handler who is also a producer and who purchases milk from producers or an association of producers, the Market Administrator shall, in the computations set forth in article VII, first exclude the milk purchased by such handler in each class from other handlers and then apportion the milk purchased by him from producers or an association of producers to each class according to the ratio which his remaining total sales in each class bear to his remaining total sales in all classes.

#### ARTICLE VII—DETERMINATION OF UNIFORM PRICES TO PRODUCERS

**SECTION 1. *Computation of Value of Milk for Each Handler.***—For each delivery period the Market Administrator shall compute, subject to the provisions of article VI, the value of milk sold or used by each handler, which was not purchased from other handlers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to sections 2, 3 and 4 of article IV and (b) adding together the resulting value of each class.

**SEC. 2. *Computation and Announcement of Uniform Prices.***—The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

1. Combine into one total the respective values of milk, computed pursuant to section 1 of this article, for each handler who made the report as required by section 1 of article V for such delivery period and who made the payments required by article VIII for milk received during the delivery period next preceding but one;
2. Add the total net amount of the differentials applicable pursuant to section 4 of article VIII;
3. Subtract the total amount to be paid to producers pursuant to paragraphs 2, 3, and 4 of section 1 of article VIII;
4. Divide by the total quantity of milk which is included in these computations and which is not in excess of the total of the respective bases of producers whose farms are located more than forty (40) miles from the State House in Boston;
5. Subtract not less than four cents (4¢) nor more than five cents (5¢) for the purpose of retaining a cash balance in connection with the payments set forth in paragraph 5 of section 1 of article VIII;
6. Add an amount which will distribute, pursuant to section 3 of this article, any cash balance available; and
7. On or before the 12th day after the end of each delivery period mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to section 8d of the Act, (b) the blended price per hundredweight which is the result of these computations and (c) the Class II price.

Sec. 3. *Distribution of Cash Balance.*—For each delivery period, the Market Administrator shall distribute, by an appropriate addition pursuant to section 2 of this article, the cash balance, if any, in his hands arising out of payments from handlers (to meet obligations arising out of paragraph 5 of section 1 of article VIII) during the delivery period next preceding but one.

**SEC. 4. *Base Rating.***—The base of each producer shall be a quantity of milk for each delivery period calculated in the following manner: Multiply the figure determined pursuant to the applicable paragraph of section 5 or section 6 of this article by the number of days on which such producer delivered milk during such delivery period.

**SEC. 5. *Bases through March 31, 1937.***—For calculating, pursuant to section 4 of this article, bases to be in effect up to and including March 31, 1937, the Market Administrator shall determine with respect to milk, or the milk equivalent of cream, delivered in bulk to processors from the farm operated by such producer:

1. In the case of each producer for whom the necessary information is submitted to the Market Administrator with respect to, and from whose farm some milk or cream was delivered in bulk to processors in, each month of one or more of the calendar years 1933, 1934 and the year ending September 30, 1935, that figure which is highest of the following six (6) calculations, or such of these six (6) calculations as are possible from available information: the average delivery per day during the quarter in which the average delivery per day was lowest of the four quarters, respectively, in the calendar year 1933, the calendar year 1934 and the year ending September 30, 1935; or 75 percent of the average delivery per day, respectively, during the calendar year 1933, the calendar year 1934 and the year ending September 30, 1935.

2. In the case of each producer for whom complete information with respect to none of the calendar years 1933, 1934, or the year ending September 30, 1935, is submitted to the Market Administrator, or from whose farm, according to such information, no milk or cream was delivered in bulk to processors in one or more months in each of the calendar years 1933, 1934, and the year ending September 30, 1935, until a satisfactory record of deliveries of milk in twelve consecutive months

subsequent to October 1934 becomes available to the Market Administrator, that figure which is 75 percent of the average delivery per day during the consecutive months subsequent to October 1934 and immediately prior to the date hereof, for which a record of milk deliveries is available to the Market Administrator; and, when a satisfactory record of deliveries of milk for twelve consecutive months following October 1934 becomes available to the Market Administrator, that figure which is higher of the two following calculations: 75 percent of the average delivery per day throughout such twelve consecutive months, and the average delivery per day during the three consecutive months of such twelve months in which the average delivery per day was lowest.

3. In the case of each producer who did not regularly sell milk for a period of thirty (30) days prior to the effective date hereof to a handler or to persons within the Marketing Area, that figure which is equal to the same percentage of his average delivery per day during the period when he receives the Class II price pursuant to paragraph 4 of section 1 of article VIII as is the relationship between (a) the total deliveries of all producers not in excess of their respective bases during such period and (b) the total deliveries of all producers.

4. In the case of a producer who, as a tenant or landlord, moves his entire herd from one farm to another farm: the higher of the two figures from which have been calculated, pursuant to section 4 of this article, respectively, (a) the base in effect for the farm from which the herd is moved and (b) the base in effect for the farm to which the herd is moved.

SEC. 6. *Bases after March 31, 1937.*—In calculating, pursuant to section 4 of this article, bases to be in effect after March 31, 1937, the Market Administrator shall determine with respect to milk delivered in bulk to handlers from the farm operated by such producer:

1. In the case of bases which are to be in effect during the period from April 1, 1937 to March 31, 1938, that figure which is the higher of (a) the average delivery per day during the three months of the calendar year 1936 in which deliveries of milk were lowest and (b) sixty (60) percent of the average delivery per day throughout the calendar year 1936; and
2. In the case of bases which are to be in effect for the year beginning April 1, 1938, and for each year thereafter beginning April 1, that figure which is the higher of (a) the average delivery per day during the three months of the next preceding calendar year in which deliveries were lowest and (b) forty (40) percent of the average delivery per day throughout such calendar year.

**SEC. 7. Recommendations.**—Prior to January 1, 1937, the Market Administrator shall recommend to the Secretary amendments to this article which will provide for an equitable method of base rating with respect to those producers for whom, due to fortuitous circumstances or otherwise, the provisions of section 6 of this article would result in bases inequitable as compared with the bases of other producers.

#### ARTICLE VIII—PAYMENTS FOR MILK.

**SECTION 1. Time and Method of Payment.**—On or before the 25th day after the end of each delivery period, each handler shall make payments, subject to the butterfat differential set forth in section 3 of this article, for the total value of milk received during such delivery period as required to be computed pursuant to section 1 of article VII, as follows:

1. To producers, except as set forth in paragraph 2 of this section, at the blended price per hundredweight computed pursuant to section 2 of article VII, subject to the differentials set forth in paragraphs 1 and 2 of section 4 of this article, for that quantity of milk deliv-

ered by each producer not in excess of the base of such producer;

2. To any producer, whose farm is located within forty (40) miles of the State House in Boston and who delivers milk to such handler at a plant located within forty (40) miles of the State House in Boston, at \$3.30 per hundredweight for that quantity of milk delivered by such producer not in excess of the base of such producer;

3. To producers, at the Class II price, subject to the differential set forth in paragraph 3 of section 4 of this article, for that quantity of milk delivered by each producer in excess of his base;

4. To any producer, who did not regularly sell milk a period of thirty (30) days prior to the effective date hereof to a handler or to persons within the Marketing Area, at the Class II price, subject to the differential set forth in paragraph 3 of section 4 of this article, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

5. To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to paragraphs 1, 2, 3, and 4 of this section are less than, or exceed, the value of milk as required to be computed for such handler pursuant to section 1 of article VII, as shown in a statement rendered by the Market Administrator on or before the 20th day after the end of such delivery period.

SEC. 2. *Errors in Payments.*—Errors in making any of the payments prescribed in this article shall be corrected not later than the date for making payments next following the determination of such errors.

SEC. 3. *Butterfat Differential.*—If any producer has delivered to any handler during any delivery period

milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments prescribed by paragraphs 1, 2, 3, and 4 of section 1 of this article to such producer, add for each one-tenth of one percent of average butterfat content above 3.7 percent or deduct for each one-tenth of one percent of average butterfat content below 3.7 percent an amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, subtract 8 cents and divide the result by 10.

SEC. 4. *Country Station Differentials.*—The payments to be made to producers by handlers pursuant to paragraphs 1, 3, and 4 of section 1 of this article shall be subject to differentials as follows:

1. With respect to that quantity of milk which is not in excess of his base, delivered by a producer to a handler's plant located more than forty (40) miles from the State House in Boston, there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots of milk in 40-quart cans, to Boston from the zone of location of the handler's plant.
2. With respect to the quantity of milk which is not in excess of his base, delivered by a producer, whose farm is located more than forty (40) miles from the State House in Boston, to a handler's plant located not more than forty (40) miles from the State House in Boston, there shall be added 21 cents per hundredweight.
3. With respect to the quantity of milk delivered by a producer, which is in excess of his base, at the plant of a handler located more than forty (40) miles from

the State House in Boston, there shall be deducted six (6) cents per hundredweight.

SEC. 5. *Other Differentials.*—In making the payments to producers set forth in paragraphs 1, 2, 3, and 4 of section 1 of this article, handlers may make deductions as follows:

1. With respect to all milk delivered by producers to the plant of a handler which is located more than forty (40) miles from the State House in Boston and which is located more than two (2) miles from a railroad shipping point, an amount not greater than 10 cents per hundredweight; provided, that such deduction has been approved and made public by the Market Administrator prior to the time of payment.

2. With respect to milk delivered by producers to a handler's plant which is located more than fourteen (14) miles, but not more than forty (40) miles, from the State House in Boston, an amount equal to 10 cents per hundredweight of Class I milk actually sold or distributed in the Marketing Area from such plant, such total amount to be deducted pro rata on all that milk not in excess of the respective bases of such producers.

#### ARTICLE IX—MARKETING SERVICES

SECTION 1. *Deductions for Marketing Services.*—Except as set forth in section 2, each handler shall deduct five (5) cents per hundredweight from the payments made direct to producers pursuant to article VIII with respect to all milk delivered to such handler during each delivery period by producers and shall pay such deductions to the Market Administrator on or before the 25th day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to, and for verification of weights, sampling and testing of milk purchased from, said producers.

SEC. 2. *Producers' Cooperative Association.*—In the case of producers for whom a cooperative association,

which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", is actually performing, as determined by the Secretary, the services set forth in section 1 of this article, each handler shall make, in lieu of the deductions specified in section 1 of this article, such deductions from the payments to be made direct to such producers, pursuant to article VIII, as are authorized by such producers and, on or before the 25th day after the end of each delivery period, pay over such deductions to the association rendering such service.

#### ARTICLE X—EXPENSE OF ADMINISTRATION

**SECTION 1. *Payments by Handlers.***—As his pro rata share of the expense of the administration hereof, each handler, except as set forth in section 1 of article VI, shall, on or before the 25th day after the end of each delivery period, pay to the Market Administrator a sum not exceeding two (2) cents per hundredweight with respect to all milk actually delivered to him during such delivery period by producers or produced by him, the exact sum to be determined by the Market Administrator subject to review by the Secretary; provided, that each handler, which is a cooperative association of producers, shall pay such pro rata share of expense of administration only on that milk actually received from producers at a plant of such association.

**SEC. 2. *Suits by Market Administrator.***—The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this article.

#### ARTICLE XI—ASSURANCE OF, AND SECURITY FOR, PAYMENTS TO PRODUCERS

**SECTION 1. *Amount.***—Each handler who purchases milk from producers or an association of producers shall, not less than ten (10) days before he is required

to make his first payments pursuant to article VIII, furnish to the Market Administrator security, in manner and form satisfactory to the Secretary, payable to the Market Administrator, as assurance of, and security for, payments to be made by such handler pursuant to article VIII, in such amount as will equal the value of the milk purchased by such handler during a period of time equivalent to a delivery period. In the event that the value of milk purchased by such handler for each of three consecutive delivery periods exceeds or is less than the amount of such security, such handler shall increase or decrease the security so that said security shall equal an amount not less than one-third of the total value of milk purchased during said three delivery periods.

*SEC. 2. Bonds under State Statute.*—If, pursuant to a State statute, any handler has furnished the duly constituted authority charged with the duty of administering the applicable provisions of such statute, a bond or other security, a part or all of which is allocable to, and assures any part of, the payments to be made to producers, such handler shall furnish to the Market Administrator, in manner and form satisfactory to the Secretary, security in such amount as will, when added to such allocable and otherwise conditioned amount of security furnished pursuant to such State statute, equal the amount of security required under section 1.

*SEC. 3. Payments to Producers.*—In the event that a handler has failed to make payments, pursuant to article VIII, the Market Administrator shall, within fifteen (15) days after such failure, send by registered mail to each producer who, according to the records of the Market Administrator, has delivered milk to such handler within the period of time involved, and to each association of producers a form of the submittal of sworn proof of claim against such handler. Upon the receipt of such sworn proof of claim, the Market Administrator shall audit such claim and in addition cause to be

audited his claim, if any, as Market Administrator against such handler, and thereupon shall determine the total payments due from such handler.

Within fifteen (15) days after the determination of the amount of said payments, the Market Administrator shall make demand by registered letter upon such handler and upon his surety, if any, for the total payments. If at the expiration of fifteen (15) days from such notice, the handler, or his surety, has not satisfied such claim, the Market Administrator shall, by conversion, sale, suit, or otherwise, make available the amount realizable from the security furnished the Market Administrator, and make distribution to the claimant or claimants, including the Market Administrator, in accordance with proofs filed, either ratably or in full, as the case may be.

If the amount realized from the security is more than sufficient to pay all claims, the balance arising therefrom shall be returned to such handler or the surety entitled thereto as the case may be.

**SEC. 4. Release.**—In the event that a handler shall cease to buy milk from producers, or an association of producers, and shall furnish proof of such cessation to the Market Administrator, the Market Administrator shall, within thirty (30) days after receipt of such proof, return the security furnished pursuant to this article.

#### ARTICLE XII—RESPONSIBILITY

**SECTION 1. Handlers.**—The liability of the handlers hereunder is several and not joint and no handler shall be liable for the default of any other handler.

#### ARTICLE XIII—SEPARABILITY

**SECTION 1. Separability.**—If any provision of this Order is declared invalid or the applicability hereof to any person, circumstance or thing is held invalid, the validity of the remainder of this Order and the appli-

cability hereof to any other person, circumstance, or thing shall not be affected thereby.

#### ARTICLE XIV—DEROGATION

SECTION 1. *Derogation.*—Nothing contained in this Order is or shall be construed to be in derogation or modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise, or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

#### ARTICLE XV—AGENTS

SECTION 1. *Agents.*—The Secretary may, by a designation in writing, name any person (not a handler), including any officer or employee of the Government, or name any bureau or division in the Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this Order.

#### ARTICLE XVI—EFFECTIVE TIME, TERMINATION AND SUSPENSION

SECTION 1. *Effective Time.*—This Order, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated or suspended, pursuant to section 2 of this article.

SEC. 2. *Suspension and Termination.*—This Order, any provision hereof or any amendment hereto, may be suspended or terminated by the Secretary, as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the Act authorizing it cease to be in effect.

SEC. 3. *Effect.*—Unless otherwise provided by the Secretary in the notice of amendment, termination or suspension, of any or all provisions hereof, the amendment, termination or suspension shall not: (a) affect, waive or terminate any right, duty, obligation or liability

ity which shall have arisen or may thereafter arise in connection with any provision of this Order; (b) release or waive any violation of this Order occurring prior to the effective date of such amendment, termination or suspension; or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to any such violation.

**SEC. 4. *Continuing Power and Duty.***—If, upon the termination or suspension of this Order, there are any obligations arising hereunder, the final accrual of ascertainment of which requires further acts by any handler, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such termination or suspension; provided, that any such acts required to be performed by the Market Administrator, shall, if the Secretary so directs, be performed by such other person, persons or agency as the Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title to all funds, property and claims vested in the Market Administrator or such person pursuant to this Order.

**SEC. 5. *Liquidation after Termination or Suspension.***—Upon the termination or suspension of this Order or of any provision hereof, the Market Administrator, or such person as the Secretary may designate, shall, if so directed by the Secretary, liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are

unpaid and owing at the time of such termination or suspension. Any funds collected pursuant to the provisions of this Order over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

SEC. 6. *Determination of Emergency.*—The Secretary hereby determines that an emergency exists which requires a shorter period of notice than three days, and that the period of notice, with respect to the issuance of this order, which is hereinafter provided, is reasonable under the circumstances.

Now, THEREFORE, R. F. TUGWELL, the Acting Secretary of Agriculture, acting under the provisions of the Agricultural Adjustment Act, as amended, for the purposes and within the limitations therein contained, and not otherwise, does hereby execute this Order in duplicate under his hand and the official seal of the Department of Agriculture, in the city of Washington, District of Columbia, on this seventh day of February, 1936, and, pursuant to the provisions hereof, declares this Order to be effective on and after 12:01 a. m., eastern standard time, February 9, 1936.

R. G. TUGWELL

*Acting Secretary of Agriculture.*

7. The said Order No. 4 provided that it should become effective at 12:01 a.m., eastern standard time, February 9, 1936, and was not amended, terminated, or suspended from the said date until August 1, 1936. On that date the Secretary of Agriculture issued the following order:

ORDER SUSPENDING ORDER NO. 4 REGULATING THE  
HANDLING OF MILK IN THE GREATER BOSTON, MASSA-  
CHUSETTS, MARKETING AREA

WHEREAS, Henry A. Wallace, Secretary of Agriculture of the United States of America, acting under the

provisions of the Agricultural Adjustment Act, as amended for the purposes and within the limitations therein contained, and pursuant to the applicable General Regulations issued thereunder, did, on the 7th day of February 1936, issue under his hand, and the official seal of the Department of Agriculture, an order for milk regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, effective the 9th day of February 1936; and

WHEREAS, the Secretary of Agriculture has determined to suspend the further operation of the said order:

Now, THEREFORE, the Secretary of Agriculture, acting under the authority vested in him as aforesaid, hereby suspends the further operation of the said Order No. 4, but any and all of the obligations which have arisen, or which may hereafter arise in connection therewith, by virtue of, or pursuant to the operation of the said order, to the effective date of this order of suspension, shall not be affected, waived, or terminated hereby.

IN WITNESS WHEREOF, H. A. Wallace, Secretary of Agriculture of the United States of America, has executed this order suspending the further operation of the aforesaid order in duplicate, and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the city of Washington, District of Columbia, this 1st day of August 1936, and hereby declares that this order shall be effective on and after 12:01 a.m. e.s.t., August 1, 1936.

/s/ H. A. WALLACE

(Secretary of Agriculture)

8. On June 19, 1937, the Secretary of Agriculture gave notice of a public hearing on a proposed marketing agreement and a proposed order regulating the handling of milk in the marketing area. A copy of the notice follows:

NOTICE OF HEARING WITH RESPECT TO A PROPOSED MARKETING AGREEMENT AND A PROPOSED ORDER REGULATING THE HANDLING OF MILK IN THE GREATER BOSTON, MASSACHUSETTS, MARKETING AREA

WHEREAS, under Public Act No. 10, 73d Congress, as amended, and as reenacted by the Agricultural Marketing Agreement Act of 1937, notice of hearing is required in connection with a proposed marketing agreement or a proposed order, and the General Regulations, Series A, No. 1, as amended, of the Agricultural Adjustment Administration, United States Department of Agriculture, provide for such notice; and

WHEREAS, the Secretary of Agriculture has reason to believe that the execution of a marketing agreement and the issuance of an order will tend to effectuate the declared policy of said act with respect to the handling of milk in the Greater Boston, Massachusetts, marketing area;

Now, THEREFORE, pursuant to the said act and said general regulations, notice is hereby given of a hearing to be held on a proposed marketing agreement and a proposed order regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, in the Armory, St. Johnsbury, Vermont, on June 29, 1937, at 9:30 a.m. eastern standard time; the Senate Chamber, State House, Augusta, Maine, on June 30, 1937, at 9:30 a.m., eastern standard time; and the Gardner Auditorium, State House, Boston, Massachusetts, on July 1, 1937, at 9:30 a.m., daylight saving time.

This public hearing is for the purpose of receiving evidence as to the general economic conditions which may necessitate regulation in order to effectuate the declared policy of the act and as to the specific provisions which a marketing agreement and order should contain.

The proposed marketing agreement and the proposed order each embodies in similar terms a plan for the regulation of such handling of milk in the Greater Bos-

ton, Massachusetts, marketing area as is in the current of interstate, or which directly burdens, obstructs or affects interstate commerce in such milk. Among other things, the proposed marketing agreement and order provide for: (a) selection of a market administrator; (b) classification of milk; (c) minimum prices; (d) payments to producers through the use of a marketwide equalization pool; (e) deductions from payments to producers for marketing services by market administrator; (f) reports of handlers; (g) expense of administration.

It is hereby declared that an emergency exists in the handling of milk in the Greater Boston, Massachusetts, marketing area, which requires a shorter period of notice than fifteen (15) days; and it is hereby determined that the period of notice given is reasonable under the circumstances.

Copies of the proposed marketing agreement and proposed order may be inspected in or procured from the office of the Hearing Clerk, Room 0318, South Building, United States Department of Agriculture, Washington, D. C.

/s/ H. A. WALLACE

Secretary of Agriculture

Dated: June 19, 1937  
Washington, D. C.

9. On June 24, 1937, the Secretary of Agriculture gave notice of the cancellation of the aforesaid hearings. A copy of the notice follows:

**ORDER CANCELLING HEARINGS WITH RESPECT TO A PROPOSED MARKETING AGREEMENT AND A PROPOSED ORDER REGULATING THE HANDLING OF MILK IN THE GREATER BOSTON, MASSACHUSETTS, MARKETING AREA**

WHEREAS, H. A. Wallace, Secretary of Agriculture of the United States, issued on June 19, 1937, a notice of hearings with respect to a proposed marketing

agreement and a proposed order regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, to be held at the following places on the dates set forth herein opposite such respective places:

St. Johnsbury, Vermont	June 29, 1937
Augusta, Maine	June 30, 1937
Boston, Massachusetts	July 1, 1937

and

WHEREAS, it is deemed necessary and advisable to cancel such hearings:

Now, THEREFORE, it is hereby ordered that the hearings hereinabove set forth be cancelled and it is further ordered that the Hearing Clerk, Office of the Solicitor, Department of Agriculture, take appropriate steps to inform interested parties of such cancellation in accordance with the manner prescribed by the General Regulations, Series A, No. 1, as amended, of the Agricultural Adjustment Administration, United States Department of Agriculture, for giving notice of hearings with respect to the issuance of marketing agreements and orders.

IN WITNESS WHEREOF, H. A. Wallace, Secretary of Agriculture of the United States, does hereby execute this order in duplicate and does cause the official seal of the Department of Agriculture to be affixed hereto in the City of Washington, District of Columbia, this 24th day of June, 1937.

/s/ H. A. WALLACE

Secretary of Agriculture

10. On June 25, 1937, Harry L. Brown, Acting Secretary of Agriculture, issued the following order, but made no findings or determinations in connection therewith other than those contained in said order:

WHEREAS, H. A. Wallace, Secretary of Agriculture of the United States of America, acting under the pro-

visions of the Agricultural Adjustment Act, as amended, executed an order on August 1, 1936, suspending Order No. 4, regulating the handling of milk in the Greater Boston, Massachusetts, marketing area; and

WHEREAS, the Secretary of Agriculture has determined to terminate said order of suspension;

Now, THEREFORE, *Harry L. Brown*, Acting Secretary of Agriculture, acting under the authority vested in him by the Agricultural Marketing Agreement Act of 1937, which re-enacts and further amends Public No. 10, 73d Congress, as amended, hereby terminates, effective as of 12:01 a.m., daylight saving time, July 1, 1937, the suspension of Article 1, Article 2, Article 3, Article 5, Article 6—Section 1, Article 12, Article 13, Article 14, Article 15, and Article 16 of said Order No. 4, and hereby terminates, effective as of 12:01 a.m., daylight saving time, August 1, 1937, the suspension of the remaining provisions of said Order No. 4, and the entire Order No. 4 is hereby declared to be effective on and after the last mentioned date.

IN WITNESS WHEREOF, *Harry L. Brown*, Acting Secretary of Agriculture of the United States of America, has executed this termination of suspension of said Order as aforesaid and has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 25th day of June, 1937.

/s/ HARRY L. BROWN

(Acting Secretary of Agriculture)

## II. Amendment of Order No. 4

11. On June 24, 1937, the Secretary of Agriculture gave notice of a hearing with respect to a proposal to amend Order No. 4 and with respect to a proposal to amend the marketing agreement tentatively approved on January 18, 1936. The notice was in the following form:

NOTICE OF HEARING WITH RESPECT TO A PROPOSAL TO  
AMEND ORDER NO. 4 REGULATING THE HANDLING OF  
MILK IN THE GREATER BOSTON, MASSACHUSETTS MAR-  
KETING AREA, AND WITH RESPECT TO A PROPOSAL TO  
AMEND THE MARKETING AGREEMENT TENTATIVELY  
APPROVED JANUARY 18, 1936

WHEREAS, under section 8c of Title I of Public No. 10, 73d Congress, as amended, the Secretary of Agriculture, hereinafter called the Secretary, issued an order regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, effective 12:01 a.m., eastern standard time, February 9, 1936; and

WHEREAS, the Secretary tentatively approved a marketing agreement regulating the handling of milk in the said marketing area on January 18, 1936; and

WHEREAS, the Secretary has reason to believe that an amendment should be made to said order and said marketing agreement; and

WHEREAS, under the Agricultural Marketing Agreement Act of 1937, which re-enacts and further amends Public No. 10, 73d Congress, as amended, notice of hearing is required in connection with a proposal to amend an order, and the General Regulations, Series A, No. 1, as amended, of the Agricultural Adjustment Administration, U. S. Department of Agriculture, provide for notice and opportunity for hearing upon marketing agreements and orders;

Now, THEREFORE, pursuant to the said acts and the General Regulations, notice is hereby given of a hearing to be held on a proposal to amend the order regulating the handling of milk in the Greater Boston, Massachusetts, marketing area and the tentatively approved marketing agreement regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, in the Armory, St. Johnsbury, Vermont, on June 30, 1937, at 9:30 a.m., eastern standard time; the Gardner Auditorium, State House, Boston,

Massachusetts, on July 1, 1937, at 9:30 a.m., daylight saving time; and the House of Representatives, State House, Augusta, Maine, July 2, 1937, at 9:30 a.m., eastern standard time.

This public hearing is for the purpose of receiving evidence as to the necessity for (1) revising the minimum prices set forth in said order and said marketing agreement, (2) deleting from said order and said marketing agreement the base rating provisions, and (3) amending any other provisions in, or adding any other provisions to, said order and said marketing agreement.

Copies of the proposal to amend the order and the marketing agreement may be inspected in or procured from the office of the Hearing Clerk, Room 0318, South Building, U. S. Department of Agriculture, Washington, D. C.

/s/ H. A. WALLACE

(Secretary of Agriculture)

Dated: June 24, 1937

Washington, D. C.

12. Public hearings on the proposed amendment to Order No. 4 and on the proposed amendment to the said marketing agreement were held at St. Johnsbury, Vermont, on June 30, 1937; at Boston, Massachusetts, on July 1, 1937; and at Augusta, Maine, on July 2, 1937. At these hearings interested parties were given an opportunity to introduce evidence and to be heard on the proposed amendments. All of the testimony received at the said hearings was reduced to writing. A certified copy of the testimony and exhibits received at the said hearings and certain documents forwarded to the Secretary by interested parties after the close of the said hearings was introduced in evidence before me as constituting the material before the Secretary at the time of the promulgation of Order No. 4, as amended, and is attached to this report as Appendix B and made a part hereof.

13. Thereafter, the Secretary tentatively approved an amendment to the said marketing agreement and handlers of more than 50% of the volume of milk covered by Order No. 4 as amended (as hereinafter defined) failed to sign such tentatively approved marketing agreement as amended.

14. On July 27, 1937, M. L. Wilson, Acting Secretary of Agriculture, made and issued the following determination which was approved by the President of the United States on the same date as is shown below:

DETERMINATION OF THE SECRETARY OF AGRICULTURE  
WITH RESPECT TO A PROPOSED ORDER, AS AMENDED,  
REGULATING THE HANDLING OF MILK IN THE GREATER  
BOSTON, MASSACHUSETTS, MARKETING AREA

WHEREAS, the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act of 1937, which reenacted and further amended Public No. 10, 73d Congress, hereinafter called the act, having reason to believe that the issuance of an amendment to a tentatively approved marketing agreement and to the order theretofore issued with respect to the handling of milk in the Greater Boston, Massachusetts, marketing area, would tend to effectuate the declared policy of the act, gave, on the 24th day of June, 1937, notice of hearings to be held on the 30th day of June, 1937, at St. Johnsbury, Vermont, on the first day of July, 1937, at Boston, Massachusetts, and on the 2nd day of July, 1937, at Augusta, Maine, on a proposed amendment to the tentatively approved marketing agreement and to the order theretofore issued regulating the handling of milk in the Greater Boston, Massachusetts, marketing area, at which times and places all interested parties were afforded an opportunity to be heard on the proposed amendment; and

WHEREAS, after such hearings and after the tentative approval by the Secretary on the 10th day of July, 1937, of an amendment to the tentatively approved

marketing agreement, handlers of more than 50 per centum of the volume of milk covered by such order, as amended, which is produced or marketed within the Greater Boston, Massachusetts, marketing area, refused or failed to sign such marketing agreement, as amended, relating to milk;

Now, THEREFORE, the Secretary of Agriculture, by virtue of the authority vested in him by the act, does hereby determine:

1. That the refusal or failure of said handlers to sign the said marketing agreement, as amended, tends to prevent the effectuation of the declared policy of the act; and
2. That the issuance of the amendment to the order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area; and
3. That the issuance of the amendment to the order is approved or favored by over 70 per centum of the producers who, during the month of May, 1937, said month being here and now determined by the Secretary to be a representative period, have been engaged in the production of milk for sale in the said area, and who participated in a referendum conducted by the Secretary on July 17, 1937.

IN WITNESS WHEREOF, I, *M. L. Wilson*, Acting Secretary of Agriculture, have executed this determination and have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 27th day of July, 1937.

/s/ *M. L. WILSON*

Acting Secretary of Agriculture

Approved:

/s/ *FRANKLIN D. ROOSEVELT*

The President of the United States

Dated: July 27, 1937

15. On July 28, 1937, M. L. Wilson, Acting Secretary of Agriculture, made certain findings and set forth the said findings in an order amending Order No. 4 which the said M. L. Wilson, Acting Secretary of Agriculture, promulgated on the same date. The said findings and order amending Order No. 4 were in the following form:

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL ADJUSTMENT ADMINISTRATION  
WASHINGTON, D. C.

Order Series—Order No. 4, Amendment No. 1

(Issued by the Secretary of Agriculture July 28, 1937)  
(Effective 12:01 a. m. E. S. T., August 1, 1937)

ORDER OF THE SECRETARY OF AGRICULTURE ISSUED PURSUANT TO THE AGRICULTURAL MARKETING ACT OF 1937, APPROVED JUNE 3, 1937 (PUBLIC, 137, 75TH CONGRESS), AMENDING ORDER NO. 4 REGULATING THE HANDLING IN INTERSTATE OR FOREIGN COMMERCE, AND SUCH HANDLING AS DIRECTLY BURDENS, OBSTRUCTS, OR AFFECTS INTERSTATE OR FOREIGN COMMERCE, OF MILK IN THE GREATER BOSTON, MASSACHUSETTS, MARKETING AREA.

Whereas, pursuant to Public, No. 10, 73rd Congress, as amended, the Secretary of Agriculture, hereinafter called the Secretary, on January 18, 1936, tentatively approved a marketing agreement regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area; and

Whereas, on February 7, 1936, the Secretary issued Order No. 4 regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, said order being effective 12:01 a. m. eastern standard time, February 9, 1936; and

Whereas, the Secretary, having reason to believe that an amendment should be made to said tentatively approved marketing agreement and to said order, gave, on the 24th day of June 1937, notice of a hearing to be held on the 30th day of June 1937 at St. Johnsbury, Ver-

mont; on the 1st day of July 1937, at Boston, Massachusetts, and on the 2nd day of July 1937 at Augusta, Maine, on a proposed amendment to said tentatively approved marketing agreement and said order, and at said times and places conducted a public hearing at which all interested parties were afforded an opportunity to be heard on the proposed amendment to said tentatively approved marketing agreement and to said order; and

*Whereas*, after such hearing and after the approval by the Secretary, in accordance with the powers and functions vested in him by the Agricultural Marketing Agreement Act of 1937, which reenacted and further amended Public No. 10, 73rd Congress, as amended, said Agricultural Marketing Agreement Act being hereinafter referred to as the act, on the 10th day of July 1937, of an amendment to said tentatively approved marketing agreement, handlers of more than 50 per centum of the volume of milk covered by such order, as amended, which is marketed within the Greater Boston, Massachusetts, Marketing Area, refused or failed to sign such tentatively approved marketing agreement, as amended, relating to milk; and

*Whereas*, the Secretary determined on the 27th day of July 1937, said determination being approved by the President of the United States on the 27th day of July 1937, that said refusal or failure tends to prevent the effectuation of the declared policy of said act, and that the issuance of this amendment to said order is the only practical means, pursuant to such policy, of advancing the interests of producers of milk in said area, and is approved or favored by over 70 per centum of the producers who, during the month of May 1937, said month being determined by the Secretary to be a representative period, have been engaged in the production of milk for sale in the Greater Boston, Massachusetts, Marketing Area, and who voted in a referendum con-

ducted by the Secretary of Agriculture on July 17, 1937; and

*Whereas*, the Secretary finds upon the evidence introduced at the hearing upon such proposed amendment, said findings being in addition to the findings made upon the evidence introduced at the hearing on said order, said original findings being herewith ratified and affirmed by the Secretary save only as such findings are in conflict with the findings hereinafter set forth:

1. That the minimum prices fixed by this amendment are reasonable and justified by the economic data submitted at the aforementioned hearings; that the prices fixed by this amendment will, over a period of time, tend to give milk sold in the marketing area a purchasing power with respect to articles that producers buy equivalent to the purchasing power of such milk in the base period; that the fixing of such prices does not have for its purpose the maintenance of prices to producers above the levels which were declared in the act to be the policy of Congress to establish; that the method provided for fixing the Class II price is a method which bears a direct and reasonable relationship to the price of cream in the above market;
2. That in view of changes in economic conditions since the date of the original findings, the payment to all producers and associations of producers delivering milk to all handlers of uniform prices for milk so delivered, without the use of a base-rating plan, but with the inclusion of special location differentials, is a fair and reasonable method of distributing to producers the proceeds of sales of milk to handlers;
3. That in view of State laws covering the giving of security by handlers, the giving of security to the Market Administrator for payments to be made by each handler is no longer necessary in order to insure the payment to producers of the minimum prices fixed in the order;

4. That all the remaining provisions of this amendment are necessary to effectuate the other provisions of the order, as amended;
5. That the order, as amended, regulates the handling of milk in the same manner as and is applicable only to handlers specified in the tentatively approved marketing agreement, as amended, upon which hearings have been held; and
6. That the issuance of the amendment to the order and all of the terms and conditions of the order, as amended, will tend to effectuate the declared policy of the act.

Now, THEREFORE, the Secretary of Agriculture, pursuant to the authority vested in him by the Agricultural Marketing Agreement Act of 1937, which reenacted and further amended Public, No. 10, 73d Congress, as amended, hereby orders that Order No. 4, regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, issued by the Secretary on February 7, 1936, be and it is hereby amended as follows:

A. Delete paragraphs 1, 5 and 9 from section 1 of article I and insert the following as new paragraphs 1 and 5 of section 1 of article I:

“1. ‘Act’ means the Agricultural Marketing Agreement Act of 1937 which reenacts and further amends Public, No. 10, 73d Congress as amended.”

“5. ‘Producer’ means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the marketing area, produces milk and distributes or delivers to a handler milk of his own production.”

B. Delete paragraph 5 from section 4 of article II and insert in lieu thereof the following:

“5. Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person, who within fifteen days after the date upon which he is required to perform such acts, has not (a)

made reports pursuant to article V or (b) made payments pursuant to article VIII;"

C. Delete Article III and insert in lieu thereof the following:

#### **"ARTICLE III—CLASSIFICATION OF MILK**

**"SECTION 1. Sales and Use Classification.**—Milk purchased or handled by handlers shall be classified as follows:

"1. All milk sold or distributed as milk, chocolate milk, or flavored milk and all milk not specifically accounted for as Class II milk shall be Class I milk; and

"2. Milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk and (b) as actual plant shrinkage within reasonable limits shall be Class II milk.

**"SEC. 2. Interhandler or Nonhandler Sales.**—Milk, including skim milk, sold by a handler to another handler or to a person who is not a handler and who distributes milk or manufactures milk products shall be presumed to be Class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to article V, notifies the Market Administrator that such milk, or a part thereof, has been sold or used by such purchaser other than as Class I milk, such milk, or part thereof, shall be classified as Class II milk; provided, that if such selling handler does not, on or before the fifteenth day after the end of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as Class I milk and so included in the statement rendered to the selling handler pursuant to paragraph 3 of section 1 of article VIII."

D. Delete sections 1, 2, and 3 of article IV and insert in lieu thereof the following:

**"SECTION 1. Class I Prices to Associations of Producers.**—Each handler shall pay any association of

producers for Class I milk containing 3.7 percent butterfat not less than the following prices:

"1. \$3.31 per hundredweight for such milk delivered from the plant of such association to such handler's plant located not more than forty miles from the State House in Boston;

"2. \$3.26 per hundredweight for such milk delivered from the plant of such association to such handler at a railroad delivery point not more than forty miles from the State House in Boston; and

"3. If such milk is delivered containing butterfat more or less than 3.7 percent such handler shall add or subtract, as the case may be, a differential for each one-tenth of one percent above or below 3.7 percent, which differential is the result of dividing by 330 the cream price used in paragraph 1 of section 3 of this article.

"*SEC. 2. Class I Prices to Producers.*—Each handler shall pay producers, in the manner set forth in article VIII, for Class I milk delivered by them, not less than the following prices:

"1. \$3.19 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than forty miles from the State House in Boston;

"2. \$3.01 per hundredweight for such milk delivered from producers' farms to such handler's plant located more than forty miles from the State House in Boston, less an amount per hundredweight equal to the freight from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the Marketing Area. Such freight shall be calculated according to applicable rail tariffs for the transportation in carload lots of milk in forty-quart cans and each such can shall be considered to contain 85 pounds of milk;

"3. For the purpose of this section the milk which was sold or distributed during each delivery period, by

each handler as Class I milk shall be presumed to have been that milk which was received at such handler's plant located not more than forty miles from the State House in Boston (a) directly from producers' farms and (b) from the nearest plants located more than forty miles from the State House in Boston.

**"SECTION 3. *Class II prices.***—Each handler shall pay producers, in the manner set forth in article VIII, for Class II milk not less than the following prices per hundredweight:

"1. In the case of such milk delivered to a handler's plant located not more than forty miles from the State House in Boston, a price which the Market Administrator shall calculate as follows: Divide by 33 the weighted average price per forty-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, multiply the result by 3.7, add 2.125 times the average of the weekly quotations per pound of domestic, 20-30 mesh, casein in bags delivered in car-load lots at New York, as published by the Oil- Paint and Drug Reporter during such delivery period, and subtract 42 cents; and

"2. In the case of such milk delivered to a handler's plant located more than forty miles from the State House in Boston, the price calculated by the Market Administrator, pursuant to paragraph 1 of this section; minus 6 cents."

E. Delete the words following the word "handlers" in paragraph 1 of section 1 of article V; and delete section 3 of article V and insert in lieu thereof the following:

**"SEC. 3. *Reports of Payments to Producers.***—Each handler shall submit to the Market Administrator within thirty days after the end of each delivery period his producer pay roll for such delivery period which

shall show for each producer: (a) The total delivery of milk with the average butterfat test thereof and (b) the net amount of such producer's payment, with the prices, deductions, and charges involved."

F. Delete section 2 of article VI and substitute therefor the following:

"*SEC. 2. Milk Purchased from Producers.*—In the case of a handler who is also a producer and who purchased milk from producers, the Market Administrator shall, before making the computations set forth in article VII, (a) exclude from such handler's Class I milk up to but not exceeding 90 percent of the quantity of milk produced and sold by him, (b) exclude the milk purchased by him in each class from other handlers, and (c) exclude from his remaining Class II milk the balance of the milk produced and sold by him."

G. Delete article VII and insert in lieu thereof the following:

#### "ARTICLE VII—DETERMINATION OF UNIFORM PRICES TO PRODUCERS

"*SECTION 1. Computation of Value of Milk for Each Handler.*—For each delivery period the Market Administrator shall compute, subject to the provisions of article VI, the value of milk sold or used by each handler, which was not purchased from other handlers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to sections 2, 3, and 4 of article IV and (b) adding together the resulting value of each class.

"*SEC. 2. Computation and Announcement of Uniform Prices.*—The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

"1. Combine into one total the respective values of milk, computed pursuant to section 1 of this article,

for each handler who made the report as required by section 1 of article V for such delivery period and who made the payments required by article VIII for milk received during the delivery period next preceding but one;

"2. Add the total net amount of the differentials applicable pursuant to section 4 of article VIII;

"3. Subtract the total amount to be paid to producers pursuant to paragraph 2 of section 1 of article VIII;

"4. Divide by the total quantity of milk which is included in these computations, except that milk required to be paid for pursuant to paragraph 2 of section 1 of article VIII;

"5. Subtract not less than four cents nor more than five cents for the purpose of retaining a cash balance in connection with the payments set forth in paragraph 3 of section 1 of article VIII;

"6. Add an amount which will prorate, pursuant to section 3 of this article, any cash balance available; and

"7. On or before the twelfth day after the end of each delivery period mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the act, (b) the blended price per hundredweight which is the result of these computations, and (c) the Class II price.

**"SEC. 3. *Proration of Cash Balance.***—For each delivery period the Market Administrator shall prorate, by an appropriate addition pursuant to section 2 of this article, the cash balance, if any, in his hands from payments made by handlers for milk received during the delivery period next preceding but one, to meet obligations arising out of paragraph 3 of section 1 of article VIII."

H. Delete articles VIII and XI and insert in lieu thereof the following:

**"ARTICLE VIII—PAYMENTS FOR MILK**

**"SECTION 1. Time and Method of Payment.**—On or before the 25th day after the end of each delivery period each handler shall make payment, subject to the butterfat differential set forth in section 3 of this article, for the total value of milk received during such delivery period as required to be computed pursuant to section 1 of article VII, as follows:

"1. To each producer, except as set forth in paragraph 2 of this section, at the blended price per hundredweight computed pursuant to section 2 of article VII, subject to the differentials set forth in section 4 of this article, for the quantity of milk delivered by such producer;

"2. To any producer, who did not regularly sell milk for a period of thirty days prior to the effective date hereof to a handler or to persons within the Marketing Area, at the Class II price, in effect for the plant at which such producer delivered milk, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

"3. To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to paragraphs 1 and 2 of this section are less than, or exceed, the value of milk as required to be computed for such handler pursuant to section 1 of article VII, as shown in a statement rendered by the Market Administrator on or before the twentieth day after the end of such delivery period.

**"SEC. 2. Errors in Payments.**—Errors in making any of the payments prescribed in this article shall be corrected not later than the date for making payments next following the determination of such errors.

*"SEC. 3. Butterfat Differential.*—If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments prescribed by paragraphs 1 and 2 of section 1 of this article to such producer, add for each one-tenth of one percent of average butterfat content above 3.7 percent, or deduct for each one-tenth of one percent of average butterfat content below 3.7 percent, an amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 33 the weighted average price per forty-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, subtract eight cents, and divide the result by ten.

*"SEC. 4. Location Differentials.*—The payments to be made to producers by handlers pursuant to paragraph 1 of section 1 of this article shall be subject to differentials as follows:

"1. With respect to milk delivered by a producer to a handler's plant located more than forty miles from the State House in Boston, there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots of milk in forty-quart cans, to Boston from the zone of location of the handler's plant.

"2. With respect to milk delivered by a producer to a handler's plant located not more than forty miles from the State House in Boston, there shall be added eighteen cents per hundredweight.

"3. With respect to milk delivered by a producer whose farm is located more than forty miles, but not more than eighty miles, from the State House in Bos-

ton, there shall be added twenty-three cents per hundredweight.

"4. With respect to milk delivered by a producer whose farm is located not more than forty miles from the State House in Boston, there shall be added 46 cents per hundredweight unless such addition gives a result greater than \$3.19 in which event there shall be added an amount which will give a result of \$3.19.

"SEC. 5. *Other Differentials.*—In making the payments to producers set forth in paragraphs 1 and 2 of section 1 of this article, handlers may make deductions as follows:

"1. With respect to all milk delivered by producers to the plant of a handler which is located more than forty miles from the State House in Boston and which is located more than two miles from a railroad shipping point, an amount not greater than ten cents per hundredweight; provided, that such deduction has been approved and made public by the Market Administrator prior to the time of payment.

"2. With respect to milk delivered by producers to a handler's plant which is located more than fourteen miles, but not more than forty miles, from the State House in Boston, an amount equal to ten cents per hundredweight of Class I milk actually sold or distributed in the Marketing Area from such plant, such total amount to be deducted pro rata on all milk delivered by such producer.

"3. With respect to milk delivered by producers to any handler's plant from which the average daily shipment of Class I milk during any delivery period is less than 21,500 pounds, an aggregate amount, prorated among producers delivering milk to such plant equal to the difference between the freight to the marketing area at the carload rate and at the less than carload rate for the Class I milk shipped during such delivery period:

**"ARTICLE IX—MARKETING SERVICES"**

**"SECTION 1. *Deductions for Marketing Services.***—Except as set forth in section 2, each handler shall deduct an amount not exceeding two cents per hundred weight (the exact amount to be determined by the Market Administrator, subject to review by the Secretary) from the payments made direct to producers pursuant to article VIII with respect to all milk delivered to such handler during each delivery period by producers and shall pay such deductions to the Market Administrator on or before the 25th day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to and for verification of weights, sampling, and testing of milk purchased from said producers.

**"SEC. 2. *Producers' Cooperative Association.***—In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the 'Capper-Volstead Act', is actually performing, as determined by the Secretary, the services set forth in section 1 of this article, each handler shall make, in lieu of the deductions specified in section 1 of this article, such deductions from the payments to be made direct to such producers, pursuant to article VIII, as are authorized by such producers and, on or before the 25th day after the end of each delivery period, pay over such deductions to the association rendering such service."

I. Delete article XI and renumber the remaining articles consecutively beginning with the number XI.

Now, THEREFORE, M. L. Wilson, Acting Secretary of Agriculture, acting under the provisions of the Agricultural Marketing Agreement Act of 1937, which re-enacted and further amended Public, No. 10, 73d Congress, as amended, does hereby execute in duplicate and issue this amendment to Order No. 4 regulating the

handling of milk in the Greater Boston, Massachusetts, Marketing Area, under his hand and the official seal of the Department of Agriculture, in the City of Washington, District of Columbia, on this 28th day of July, 1937, and, pursuant to the provisions hereof, declares this amendment to be effective on and after 12:01 a. m. E. S. T., August 1, 1937.

M. L. WILSON

*Acting Secretary of Agriculture.*

16. The said Order No. 4, as amended by the said order issued by the said M. L. Wilson, on July 28, 1937, is herein-after referred to as "Order No. 4 as amended" or as "the Order." Order No. 4 as amended follows:

Issued July 28, 1937

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

COMPILATION OF ORDER NO. 4 REGULATING THE HANDLING OF MILK IN THE GREATER BOSTON, MASS., MARKETING AREA, WITH THE INCORPORATION OF AMENDMENT NO. 1 OF AUGUST 1937

Order No. 4, issued by the Secretary of Agriculture February 7, 1936, effective 12:01 a. m., E. S. T., February 9, 1936; Amendment issued by the Secretary July 28, 1937, effective 12:01 a. m., E. S. T., August 1, 1937

The findings, made by the Secretary at the time of issuance of Order No. 4 and the amendment to Order No. 4, have been eliminated from this document for the sake of brevity.

#### ARTICLE I—DEFINITIONS

SECTION 1. *Terms.*—The following terms shall have the following meanings:

1. "Act" means the Agricultural Marketing Agreement Act of 1937 which reenacts and further amends Public, No. 10, 73d Congress, as amended.

2. "Secretary" means the Secretary of Agriculture of the United States.
3. "Greater Boston, Massachusetts, Marketing Area", hereinafter called the "Marketing Area", means the territory included within the boundary lines of the cities and towns of Arlington, Belmont, Beverly, Boston, Braintree, Brookline, Cambridge, Chelsea, Dedham, Everett, Lexington, Lynn, Malden, Marblehead, Medford, Melrose, Milton, Nahant, Needham, Newton, Peabody, Quincy, Reading, Revere, Salem, Saugus, Somerville, Stoneham, Swampscott, Wakefield, Waltham, Watertown, Wellesley, Weymouth, Winchester, Winthrop, and Woburn, Massachusetts.
4. "Person" means any individual, partnership, corporation, association, and any other business unit.
5. "Producer" means any person who, in conformity with the health regulations which are applicable to milk which is sold for consumption as milk in the Marketing Area, produces milk and distributes, or delivers to a handler, milk of his own production.
6. "Handler" means any person, irrespective of whether such person is a producer or an association of producers, wherever located or operating, who engages in such handling of milk, which is sold as milk or cream in the Marketing Area, as is in the current of interstate or foreign commerce or which directly burdens, obstructs, or affects interstate or foreign commerce in milk and its products.
7. "Market Administrator" means the person designated pursuant to article II as the agency for the administration hereof.
8. "Delivery period" means the current marketing period from the first to, and including, the fifteenth day of each month, and from the sixteenth to, and including, the last day of each month.

#### ARTICLE II—MARKET ADMINISTRATOR

SECTION 1. *Selection, Removal, and Bond.*—The Market Administrator shall be selected by the Secre<sup>o</sup>

tary and shall be subject to removal by him at any time. The Market Administrator shall, within 45 days following the date upon which he enters upon his duties, execute and deliver to the Secretary a bond, conditioned upon the faithful performance of his duties, in an amount and with surety thereon satisfactory to the Secretary.

**SEC. 2. Compensation.**—The Market Administrator shall be entitled to such reasonable compensation as may be determined by the Secretary.

**SEC. 3. Powers.**—The Market Administrator shall have power:

1. To administer the terms and provisions hereof;
2. To receive, investigate, and report to the Secretary complaints of violations of the terms and provisions hereof.

**SEC. 4. Duties.**—The Market Administrator, in addition to the duties hereinafter described, shall:

1. Keep such books and records as will clearly reflect the transactions provided for herein;
2. Submit his books and records to examination by the Secretary at any and all times;
3. Furnish such information and such verified reports as the Secretary may request;
4. Obtain a bond with reasonable security thereon covering each employee who handles funds entrusted to the Market Administrator;
5. Publicly disclose to handlers and producers, unless otherwise directed by the Secretary, the name of any person who, within 15 days after the date upon which he is required to perform such acts, has not (a) made reports pursuant to article V or (b) made payments pursuant to article VIII;
6. Employ and fix the compensation of such persons as may be necessary to enable him to administer the terms and provisions hereof; and
7. Pay, out of the funds provided by article X, (a) the cost of his bond and of the bonds of such of his em-

ployees as handle funds entrusted to the Market Administrator, (b) his own compensation, and (c) all other expenses which will necessarily be incurred by him for the maintenance and functioning of his office and the performance of his duties.

**SEC. 5. Responsibility.**—The Market Administrator, in his capacity as such, shall not be held responsible in any way whatsoever to any handler, or to any other person, for errors in judgment, for mistakes, or for other acts either of commission or omission, except for his own willful misfeasance, malfeasance, or dishonesty.

#### ARTICLE III—CLASSIFICATION OF MILK

**SECTION 1. Sales and Use Classification.**—Milk purchased or handled by handlers shall be classified as follows:

1. All milk sold or distributed as milk, chocolate milk, or flavored milk and all milk not specifically accounted for as Class II milk shall be Class I milk; and
2. Milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk, chocolate milk, or flavored milk and (b) as actual plant shrinkage within reasonable limits shall be Class II milk.

**SEC. 2. Inter-Handler or Non-Handler Sales.**—Milk, including skim milk, sold by a handler to another handler or to a person who is not a handler and who distributes milk or manufactures milk products shall be presumed to be Class I milk. In the event that such selling handler, on or before the date fixed for filing reports pursuant to article V, notifies the Market Administrator that such milk, or a part thereof, has been sold or used by such purchaser other than as Class I milk, such milk, or part thereof, shall be classified as Class II milk; provided, that if such selling handler does not, on or before the fifteenth day after the end

of the delivery period during which such sale was made, furnish proof satisfactory to the Market Administrator in support of the above notification, such milk or part thereof shall then be classified as Class I milk and so included in the statement rendered to the selling handler pursuant to paragraph 3 of section 1 of article VIII.

#### ARTICLE IV—MINIMUM PRICES

SECTION 1. *Class I Prices to Associations of Producers.*—Each handler shall pay any association of producers for Class I milk containing 3.7 percent butterfat not less than the following prices:

1. \$3.31 per hundredweight for such milk delivered from the plant of such association to such handler's plant located not more than 40 miles from the State House in Boston;

2. \$3.26 per hundredweight for such milk delivered from the plant of such association to such handler at a railroad delivery point not more than 40 miles from the State House in Boston; and

3. If such milk is delivered containing butterfat more or less than 3.7 percent such handler shall add or subtract, as the case may be, a differential for each one-tenth of one percent above or below 3.7 percent, which differential is the result of dividing by 330 the cream price used in paragraph 1 of section 3 of this article.

SEC. 2. *Class I Prices to Producers.*—Each handler shall pay producers, in the manner set forth in article VIII, for Class I milk delivered by them, not less than the following prices:

1. \$3.19 per hundredweight for such milk delivered from producers' farms to such handler's plant located not more than 40 miles from the State House in Boston;

2. \$3.01 per hundredweight for such milk delivered from producers' farms to such handler's plant located

more than 40 miles from the State House in Boston, less an amount per hundredweight equal to the freight from the railroad shipping point for such handler's plant to such handler's railroad delivery point in the Marketing Area. Such freight shall be calculated according to applicable rail-tariffs for the transportation in carload lots of milk in 40-quart cans and each such can shall be considered to contain 85 pounds of milk;

3. For the purpose of this section the milk which was sold or distributed, during each delivery period, by each handler as Class I milk shall be presumed to have been that milk which was received at such handler's plant located not more than 40 miles from the State House in Boston (a) directly from producers' farms and (b) from the nearest plants located more than 40 miles from the State House in Boston.

SEC. 3. *Class II Prices.*—Each handler shall pay producers, in the manner set forth in article VIII, for Class II milk not less than the following prices per hundredweight:

1. In the case of such milk delivered to a handler's plant located not more than 40 miles from the State House in Boston, a price which the Market Administrator shall calculate as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, multiply the result by 3.7, and add 2.125 times the average of the weekly quotations per pound of domestic, 20-30 mesh, casein in bags delivered in carload lots at New York, as published by the Oil, Paint and Drug Reporter during such delivered period, and subtract 42 cents; and

2. In the case of such milk delivered to a handler's plant located more than 40 miles from the State House in Boston, the price calculated by the Market Admin-

istrator, pursuant to paragraph 1 of this section, minus 6 cents.

SEC. 4. *Sales Outside the Marketing Area.*—The price to be paid by each handler to associations of producers or to producers, in the manner set forth in article VIII, for milk utilized as Class I milk outside the Marketing Area, shall be the price applicable pursuant to sections 1 and 2 of this article adjusted by (a) the difference between such applicable price and the price ascertained by the Market Administrator as the prevailing price paid by processors for milk of equivalent use in the market where such Class I milk is utilized and (b) the difference between the freight allowance, if any, set forth in paragraph 2 of section 2 of this article and an amount equal to the carload freight rate approved by the Interstate Commerce Commission for movement of milk in 40-quart cans from the shipping point for the plant where such Class I milk is received from producers to the railroad delivery point serving the market where such Class I milk is sold; provided, that (1) if the market where such Class I milk is utilized is less than 10 miles from the plant where such Class I milk is received from producers, the railroad shipping point for such plant shall be presumed to be the railroad delivery point serving such market, and (2) if the market where such Class I milk is utilized is located in Barnstable, Plymouth, Norfolk, Dukes, and Nantucket Counties, Massachusetts, such handler's railroad delivery point in the Marketing Area shall be considered to be the railroad delivery point serving such market.

SEC. 5. *Publication of Class II Prices.*—On or before the fifth day after the end of each delivery period, the Market Administrator shall publicly announce the Class II price in effect for such delivery period.

## ARTICLE V—REPORTS OF HANDLERS

**SECTION 1. Periodic Reports.**—On or before the eighth day after the end of each delivery period, each handler shall, except as set forth in section 1 of article VI, with respect to milk or cream which was, during such delivery period, (a) received from producers, (b) received from handlers, or (c) produced by such handler, report to the Market Administrator in the detail and form prescribed by the Market Administrator, as follows:

1. The receipts at each plant from producers who are not handlers;
2. The receipts at each plant from any other handler, including any handler who is also a producer;
3. The quantity, if any, produced by such handler; and
4. The respective quantities of milk which were sold, distributed, or used, including sales to other handlers, for the purpose of classification pursuant to article III.

**SEC. 2. Reports as to Producers.**—Each handler shall report to the Market Administrator:

1. Within 10 days after the Market Administrator's request with respect to any producer for whom such information is not in the files of the Market Administrator, and with respect to a period or periods of time designated by the Market Administrator, (a) the name and address, (b) the total pounds of milk delivered, (c) the average butterfat test of milk delivered, and (d) the number of days upon which deliveries were made; and
2. As soon as possible after first receiving milk from any producer: (a) The name and address of such producer, (b) the date upon which such milk was first received, (c) the plant at which such producer delivered milk, and (d) the plant, if known, at which such producer delivered milk immediately prior to the beginning of delivery to such handler.

**SEC. 3. *Reports of Payments to Producers.***—Each handler shall submit to the Market Administrator within 30 days after the end of each delivery period his producer payroll for such delivery period which shall show for each producer: (a) The total delivery of milk with the average butterfat test thereof and (b) the net amount of such producer's payment, with the prices, deductions, and charges involved.

**SEC. 4. *Outside Cream Purchases.***—Each handler shall report, as requested by the Market Administrator, his purchases, if any, of bottling quality cream from handlers who receive no milk from producers, showing the quantity and the source of each such purchase and the cost thereof at Boston.

**SEC. 5. *Verification of Reports.***—In order that the Market Administrator may submit verified reports to the Secretary pursuant to paragraph 3 of section 4 of article II, each handler shall permit the Market Administrator or his agent, during the usual hours of business, to (a) verify the information contained in reports submitted in accordance with this article and (b) weigh, sample, and test milk for butterfat.

#### ARTICLE VI—HANDLERS WHO ARE ALSO PRODUCERS

**SECTION 1. *Application of Provisions.***—No provision hereof shall apply to a handler who is also a producer and who purchases no milk from producers or an association of producers, except that such handler shall make reports to the Market Administrator at such time and in such manner as the Market Administrator may request.

**SEC. 2. *Milk Purchased from Producers.***—In the case of a handler who is also a producer and who purchased milk from producers, the Market Administrator shall, before making the computations set forth in article VII, (a) exclude from such handler's class I milk up to but not exceeding 90 percent of the quantity.

of milk produced and sold by him, (b) exclude the milk, purchased by him in each class from other handlers, and (c) exclude from his remaining Class II milk the balance of the milk produced and sold by him.

#### ARTICLE VII—DETERMINATION OF UNIFORM PRICES TO PRODUCERS

**SECTION 1. *Computation of Value of Milk for Each Handler.***—For each delivery period the Market Administrator shall compute, subject to the provisions of article VI, the value of milk sold or used by each handler, which was not purchased from other handlers, by (a) multiplying the quantity of such milk in each class by the price applicable pursuant to sections 2, 3, and 4 of article IV and (b) adding together the resulting value of each class.

**SEC. 2. *Computation and Announcement of Uniform Prices.***—The Market Administrator shall compute and announce the uniform prices per hundredweight of milk delivered during each delivery period in the following manner:

1. Combine into one total the respective values of milk, computed pursuant to section 1 of this article, for each handler who made the report as required by section 1 of article V for such delivery period and who made the payments required by article VIII for milk received during the delivery period next preceding but one;
2. Add the total net amount of the differentials applicable pursuant to section 4 of article VIII;
3. Subtract the total amount to be paid to producers pursuant to paragraph 2 of section 1 of article VIII;
4. Divide by the total quantity of milk which is included in these computations except that milk required to be paid for pursuant to paragraph 2 of section 1 of article VIII;
5. Subtract not less than 4 cents nor more than 5 cents for the purpose of retaining a cash balance in

connection with the payments set forth in paragraph 3 of section 1 of article VIII;

6. Add an amount which will prorate, pursuant to section 3 of this article, any cash balance available; and

7. On or before the twelfth day after the end of each delivery period mail to all handlers and publicly announce (a) such of these computations as do not disclose information confidential pursuant to the Act, (b) the blended price per hundredweight which is the result of these computations, and (c) the Class II price.

Sec. 3. *Proration of Cash Balance.*—For each delivery period the Market Administrator shall prorate, by an appropriate addition pursuant to section 2 of this article, the cash balance, if any, in his hands from payments made by handlers for milk received during the delivery period next preceding but one, to meet obligations arising out of paragraph 3 of section 1 of article VIII.

#### ARTICLE VIII—PAYMENTS FOR MILK

SECTION 1. *Time and Method of Payment.*—On or before the twenty-fifth day after the end of each delivery period, each handler shall make payment, subject to the butterfat differential set forth in section 3 of this article, for the total value of milk received during such delivery period as required to be computed pursuant to section 1 of article VII, as follows:

1. To each producer, except as set forth in paragraph 2 of this section, at the blended price per hundredweight computed pursuant to section 2 of article VII, subject to the differentials set forth in section 4 of this article, for the quantity of milk delivered by such producer;

2. To any producer, who did not regularly sell milk for a period of 30 days prior to the effective date hereof to a handler or to persons within the Marketing Area, at the Class II price, in effect for the plant at which

such producer delivered milk, for all the milk delivered by such producer during the period beginning with the first regular delivery of such producer and continuing until the end of two full calendar months following the first day of the next succeeding calendar month;

3. To producers, through the Market Administrator, by paying to or receiving from the Market Administrator, as the case may be, the amount by which the payments made pursuant to paragraphs 1 and 2 of this section are less than, or exceed, the value of milk as required to be computed for such handler pursuant to section 1 of article VII, as shown in a statement rendered by the Market Administrator on or before the twentieth day after the end of such delivery period.

**SEC. 2. *Errors in Payments.***—Errors in making any of the payments prescribed in this article shall be corrected not later than the date for making payments next following the determination of such errors.

**SEC. 3. *Butterfat Differential.***—If any producer has delivered to any handler during any delivery period milk having an average butterfat content other than 3.7 percent, such handler shall, in making the payments prescribed by paragraphs 1 and 2 of section 1 of this article to such producer, add for each one-tenth of 1 percent of average butterfat content above 3.7 percent or deduct for each one-tenth of 1 percent of average butterfat content below 3.7 percent an amount per hundredweight which shall be calculated by the Market Administrator as follows: Divide by 33 the weighted average price per 40-quart can of bottling quality cream in the Boston market, as reported by the United States Department of Agriculture for the delivery period during which such milk is delivered, subtract 8 cents, and divide the result by 10.

**SEC. 4. *Location Differentials.***—The payments to be made to producers by handlers pursuant to paragraph 1 of section 1 of this article shall be subject to differentials as follows:

1. With respect to milk delivered by a producer to a handler's plant located more than 40 miles from the State House in Boston, there shall be deducted an amount per hundredweight equal to the freight (considering 85 pounds of milk per can), according to the tariff currently approved by the Interstate Commerce Commission for the transportation, in carload lots, of milk in 40-quart cans, to Boston from the zone of location of the handler's plant.

2. With respect to milk delivered by a producer to a handler's plant located not more than 40 miles from the State House in Boston, there shall be added 18 cents per hundredweight.

3. With respect to milk delivered by a producer, whose farm is located more than 40 miles, but not more than 80 miles, from the State House in Boston, there shall be added 23 cents per hundredweight.

4. With respect to milk delivered by a producer, whose farm is located not more than 40 miles from the State House in Boston, there shall be added 46 cents per hundredweight unless such addition gives a result greater than \$3.19, in which event there shall be added an amount which will give a result of \$3.19.

SEC. 5. *Other Differentials.*—In making the payments to producers set forth in paragraphs 1 and 2 of section 1 of this article, handlers may make deductions as follows:

1. With respect to all milk delivered by producers to the plant of a handler which is located more than 40 miles from the State House in Boston and which is located more than 2 miles from a railroad shipping point, an amount not greater than 10 cents per hundredweight; provided, that such deduction has been approved and made public by the Market Administrator prior to the time of payment.

2. With respect to milk delivered by producers to a handler's plant which is located more than 14 miles, but not more than 40 miles from the State House in

Boston, an amount equal to 10 cents per hundred-weight of Class I milk actually sold or distributed in the Marketing Area from such plant, such total amount to be deducted pro rata on all milk delivered by such producers.

3. With respect to milk delivered by producers to any handler's plant from which the average daily shipment of Class I milk during any delivery period is less than 21,500 pounds, an aggregate amount, pro rated among producers delivering milk to such plant, equal to the difference between the freight to the marketing area at the carload rate and at the less than carload rate for the Class I milk shipped during such delivery period.

#### ARTICLE IX—MARKETING SERVICES

SECTION 1. *Deductions for Marketing Services.*—Except as set forth in section 2, each handler shall deduct an amount not exceeding 2 cents per hundred-weight (the exact amount to be determined by the Market Administrator, subject to review by the Secretary) from the payments made direct to producers pursuant to article VIII with respect to all milk delivered to such handler during each delivery period by producers and shall pay such deductions to the Market Administrator on or before the twenty-fifth day after the end of such delivery period. Such monies shall be expended by the Market Administrator for market information to, and for verification of weights, sampling, and testing of milk purchased from, said producers.

SEC. 2. *Producers' Cooperative Association.*—In the case of producers for whom a cooperative association, which the Secretary determines to be qualified under the provisions of the Act of Congress of February 18, 1922, as amended, known as the "Capper-Volstead Act", is actually performing, as determined by the Secretary, the services set forth in section 1 of this article, each handler shall make, in lieu of the de-

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ductions specified in section 1 of this article, such deductions from the payments to be made direct to such producers, pursuant to article VIII, as are authorized by such producers and, on or before the twenty-fifth day after the end of each delivery period, pay over such deductions to the association rendering such service.

### ARTICLE X—EXPENSE OF ADMINISTRATION

**SECTION 1.** *Payments by Handlers.*—As his pro rata share of the expense of the administration hereof, each handler, except as set forth in section 1 of article VI, shall, on or before the twenty-fifth day after the end of each delivery period, pay to the Market Administrator a sum not exceeding 2 cents per hundredweight with respect to all milk actually delivered to him during such delivery period by producers or produced by him, the exact sum to be determined by the Market Administrator subject to review by the Secretary; provided, that each handler, which is a cooperative association of producers, shall pay such pro rata share of expense of administration only on that milk actually received from producers at a plant of such association.

**SEC. 2.** *Suits by Market Administrator.*—The Market Administrator may maintain a suit in his own name against any handler for the collection of such handler's pro rata share of expense set forth in this article.

### ARTICLE XI—EFFECTIVE TIME, SUSPENSION, AND TERMINATION

**SECTION 1.** *Effective Time.*—The provisions hereof, or any amendment hereto, shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated, pursuant to section 2 of this article.

**SEC. 2.** *Suspension and Termination.*—Any or all provisions hereof, or any amendment hereto, shall be

suspended or terminated as to any or all handlers after such reasonable notice as the Secretary may give, and shall, in any event, terminate whenever the provisions of the act authorizing it cease to be in effect.

**SEC. 3. *Effect.***—Unless otherwise provided by the Secretary in the notice of amendment, suspension, or termination of any or all provisions hereof, the amendment, suspension, or termination shall not (a) affect, waive, or terminate any right, duty, obligation, or liability which shall have arisen or may thereafter arise in connection with any provisions hereof; (b) release or waive any violation hereof occurring prior to the effective date of such amendment, suspension, or termination; (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to any such violation.

**SEC. 4. *Continuing Power and Duty.***—If, upon the suspension or termination of any or all provisions hereof, there are any obligations arising hereunder, the final accrual or ascertainment of which requires further acts by any handlers, by the Market Administrator, or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination; provided, that any such acts required to be performed by the Market Administrator shall, if the Secretary so directs, be performed by such other person, persons, or agency as the Secretary may designate.

The Market Administrator, or such other person as the Secretary may designate, (a) shall continue in such capacity until discharged by the Secretary, (b) from time to time account for all receipts and disbursements and deliver all funds or property on hand, together with the books and records of the Market Administrator, or such person, to such person as the Secretary shall direct, and (c) if so directed by the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full

title to all funds, property, and claims vested in the Market Administrator or such person pursuant hereto.

**SEC. 5. *Liquidation After Suspension or Termination.***—Upon the suspension or termination of any or all provisions hereof the Market Administrator, or such person as the Secretary may designate, shall if so directed by the Secretary, liquidate the business of the Market Administrator's office, and dispose of all funds and property then in his possession or under his control, together with claims for any funds which are unpaid and owing at the time of such suspension or termination. Any funds collected pursuant to the provisions hereof, over and above the amounts necessary to meet outstanding obligations and the expenses necessarily incurred by the Market Administrator or such person in liquidating and distributing such funds, shall be distributed to the contributing handlers and producers in an equitable manner.

#### ARTICLE XII—LIABILITY

**SECTION 1. *Handlers.***—The liability of the handlers hereunder is several and not joint and no handlers shall be liable for the default of any other handler.

17. No findings or determinations made by the Secretary of Agriculture (or any Acting Secretary of Agriculture) in connection with the promulgation of the original Order No. 4 or the amendment thereof other than those above set forth were introduced in evidence.

**PART TWO****THE HISTORY OF AND ECONOMIC CONDITIONS IN THE BOSTON MARKET***I. The Boston Milkshed***A. The Area Covered.**

18. The area in which farms are located that produce the fluid milk supply for a metropolitan area is ordinarily described as the "milkshed." In 1900 the milkshed for the Boston market extended 70 to 80 miles out from the city of Boston into southern New Hampshire and Maine; out to the Connecticut River, or somewhat beyond, in northern Massachusetts; and down into eastern Connecticut. By 1910 the area had extended into eastern New York to about Rensselaer and Washington Counties; up into Vermont as far as Newport, Vermont; into Canada to a certain extent; and had extended further into Maine. In 1920 the milkshed had extended all through Vermont and into the larger part of Maine. By 1926 the area was somewhat more extended and also extended into Canada to a greater extent. The growth of the Boston milkshed from 1900 to its peak in 1926 is best illustrated by the maps appearing on the following page.

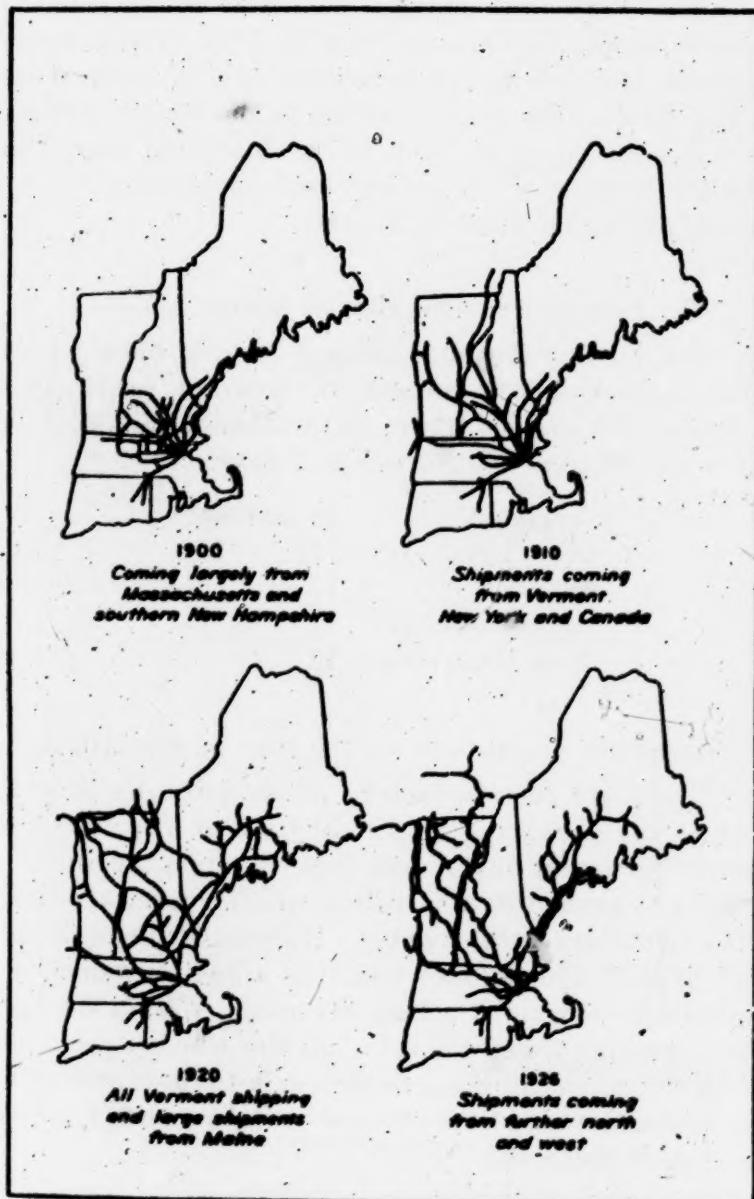


FIG. 5. SOURCES OF MILK AND CREAM BY RAIL TO BOSTON MARKET

The expansion of the milk shed of metropolitan Boston has been rapid during the past two decades.

19. Since 1926 the area included in the Boston milkshed has contracted somewhat. The present milkshed may be described as taking in that part of Maine south of Bangor, covering a large part of New Hampshire, covering practically all of Vermont, though a somewhat smaller part of the western side of Vermont than in 1926, taking in none of Canada, and taking in a somewhat smaller area in eastern New York. The present extent of the Boston milkshed is best illustrated by the map on the following page which shows the location of all country stations operated by handlers supplying the Boston Market.

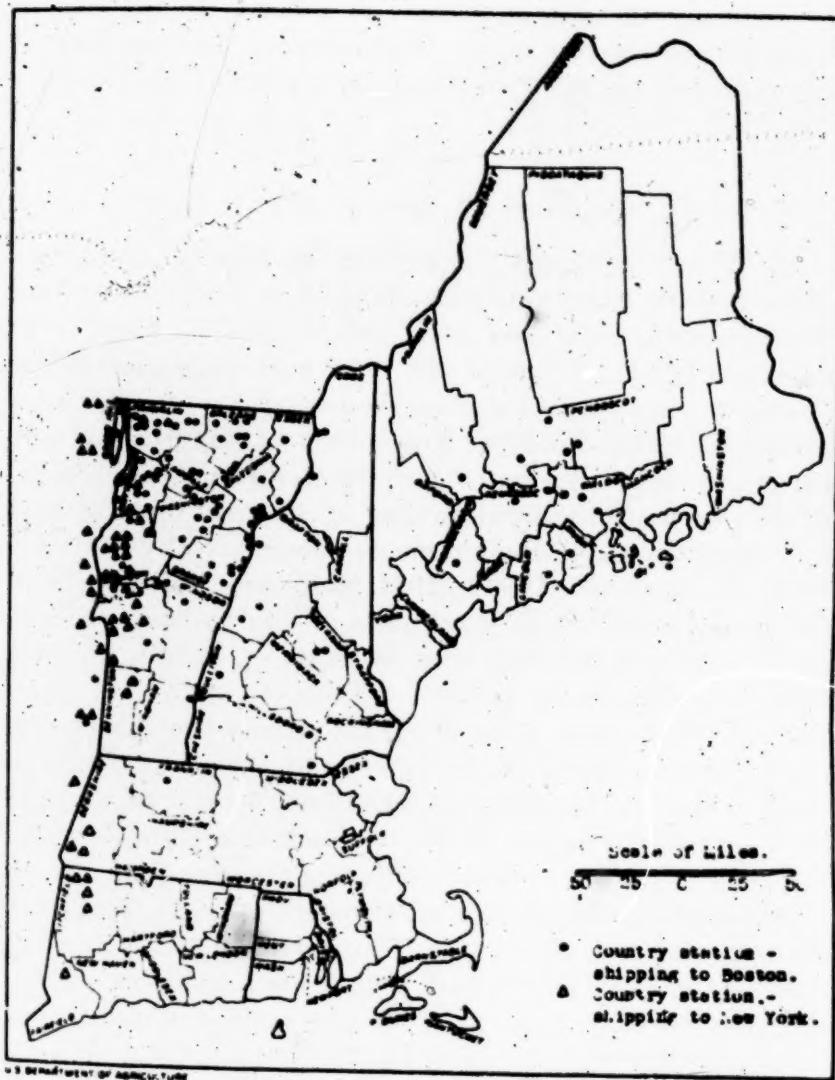
#### B. Present Participation in Boston Market.

20. Considering the total amount of milk coming to the Boston market as 100 percent, the average participation for each of the various States in the Boston milkshed during the period 1930 to 1936 was as follows:

Vermont	58	percent
New York	7	"
Maine	12	"
Massachusetts	11	"
New Hampshire	12	"

#### C. Economic Limitations on the Size of the Milkshed

21. There are certain factors which naturally limit the extent of the area supplying fluid milk to a metropolitan center. The extent of the area depends upon the ability to ship milk to market in a condition which complies with the health regulations in the market. Because of the perishable nature of milk and the fact that it is a bulky product, it is not profitable to ship it a long distance. Within the milkshed the general practice is for a handler who has more than one country receiving plant to ship milk to the market from the nearest receiving stations and to ship cream from the more distant stations.



Location of country stations in the milkshed, supplying  
the Greater Boston Marketing Area

22. The area supplying milk for manufacturing purposes is much broader than the area supplying milk for fluid purposes. One reason for this is that the milk can be converted into a concentrated product near the source of supply thereby reducing the shipping costs in relation to the cost of transporting the raw milk. Furthermore, the concentrated products are less perishable in nature and will stand longer shipment.

## *II. Origin of the Boston Milk Supply*

23. The milk supply for the Boston marketing area as defined in the order originates largely in States other than Massachusetts. As has been pointed out in Finding 20 *supra*, only 11 percent of the fluid milk consumed in the Boston marketing area during the period 1930 to 1936 originated in Massachusetts. The origin of the Boston milk supply is best illustrated by the following tabulations. (Table A shows the total number of 40-quart units of fluid milk received in the Boston metropolitan area by States of origin for the years 1932 to 1937, inclusive. Table B shows the total number of 40-quart units of fluid milk received in the Boston metropolitan area by States of origin for each month during the year 1937. Table C shows the total number of 40-quart units of cream received in the Boston metropolitan area by States of origin for the years 1932 to 1937, inclusive. Table D shows the total number of 40-quart units of cream received in the Boston metropolitan area by States of origin for each month during the year 1937. Table E shows the total number of 40-quart units of fresh condensed milk received in the Boston metropolitan area by States of origin for the years 1932 to 1937 inclusive. Table F shows the total number of 40-quart units of fresh condensed milk received in the Boston metropolitan area by States of origin for each month during the year 1937):

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TABLE A  
Receipts of milk at the Boston and Metropolitan  
Area, by States of origin, 1932-1937

State	1932	1933	1934	1935	1936	1937
	40-quart units	40-quart units	40-quart units	40-quart units	40-quart units	40-quart units
Vermont	3,840,926	3,376,147	3,415,786	3,124,723	2,911,619	2,979,698
New York	352,067	359,366	341,497	430,309	385,443	403,857
Maine	759,217	769,494	688,063	692,245	783,238	858,485
Massachusetts	596,958	544,091	530,629	718,132	752,030	764,019
New Hampshire	744,764	670,569	765,003	709,664	716,723	575,400
Connecticut	—	—	—	—	—	—
Rhode Island	387	1,883	12,949	37,121	44,402	41,536
Illinois	—	—	—	—	3,289	—
Indiana	—	—	—	—	500	—
Maryland	—	—	—	—	478	—
Ohio	—	—	—	—	675	—
Total	6,294,319	5,721,550	5,753,927	5,712,194	5,598,397	5,622,995

Compiled from reports of the Bureau of Agricultural Economics.

TABLE B  
FLUID MILK: Receipts at Boston and Metropolitan Area, by state  
of origin, by months, 1937

State of origin	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
	40-qt. units												
Vt.	248,284	233,004	250,780	210,138	223,833	236,465	279,904	289,632	239,060	256,619	268,257	243,742	2,979,898
N. Y.	50,658	34,656	28,042	31,426	38,981	41,114	36,909	32,264	32,219	30,141	23,693	23,754	403,857
Maine	54,185	60,703	75,470	78,137	88,433	83,197	78,159	69,482	67,122	71,483	62,703	69,411	858,485
Mass.	62,998	59,373	67,103	68,974	75,039	71,696	62,870	59,979	58,009	61,789	54,994	61,195	764,019
N. H.	38,187	34,685	45,751	53,264	48,980	40,061	49,469	50,986	48,810	48,581	56,711	59,915	575,400
R. I.	9,001	6,324	6,922	4,344	4,654	1,474	—	—	2,677	6,140	—	—	41,536
Total	463,293	428,745	474,068	446,283	479,920	474,007	507,311	501,443	448,797	474,753	466,358	458,017	5,622,995

Compiled from reports of the Bureau of Agricultural Economics.

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**TABLE C**  
**Receipts of cream at Boston and Metropolitan Area by State of origin, 1932-1937**

State of origin	1932		1933		1934		1935		1936		1937	
	40-quart units <sup>1</sup>	40-quart units										
Alabama												
Vermont	237,635		228,547		272,806		316,489		286,740		224,754	
New York	24,337		23,325		68,808		26,586		34,013		48,032	
Maine	57,793		52,626		45,365		48,326		39,031		22,976	
Massachusetts	1,264		1,509		2,202		2,248		1,949		839	
New Hampshire	17,071		19,964		19,949		22,148		16,060		4,536	
Connecticut	1		200									
Canada												
Illinois	5,960		3,950		1,400		1,000		1,380		14,807	
Indiana	26,434		22,563		7,731		3,800		1,150		780	
Iowa												
Kansas	5,165		7,975		2,000		800		3,800		5,800	
Kentucky	3,742											
Louisiana												
Maryland	6,640		1,700		400		200					
Michigan	29,954		45,302		50,915		61,981		79,112		71,515	
Minnesota	230		21,882		9,299		7,410		2,280		8,933	
Missouri	36,536		30,703		13,884		10,816		19,801		40,318	
New Jersey												
Ohio	18,399		15,435		14,160		8,000		13,566		21,090	
Pennsylvania												
Rhode Island	2,941		73		360		1		6,450			
Tennessee	1,695		11,383		22,449		6,829		14,295		12,148	
Wisconsin	57,208		52,162		56,335		31,527		46,479		66,852	
Mississippi									200		200	
Total	542,005		539,406		586,264		554,610		573,106		578,136	

<sup>1</sup> 40-quart units equal standard 10-gallon cans, or about 88.5 pounds for cream.

Compiled from reports of the Bureau of Agricultural Economics.

TABLE D  
FLUID CREAM: Receipts at Boston and Metropolitan Area by State  
of origin, by months, 1937

State of origin	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
	40-qt. units												
Vt.	12,176	11,677	18,758	24,977	32,701	35,639	23,986	14,278	16,780	14,880	8,699	10,273	224,754
N.Y.	8,225	5,079	7,529	6,626	4,969	3,139	7,760	3,094	697	325	543	46	48,032
Maine	1,986	1,296	1,515	1,707	2,321	3,501	1,515	1,315	1,811	2,350	1,708	1,921	22,976
Mass.	20	38	84	47	283	63	58	72	45	33	61	35	839
N.H.	146	116	161	173	629	1,529	419	222	253	487	204	197	4,536
Ill.	—	—	—	—	380	200	—	—	—	—	—	900	780
Ind.	4,000	3,400	2,200	1,751	2,820	2,200	3,250	5,500	3,900	2,800	3,190	2,345	37,356
Kansas	—	200	200	—	400	400	—	400	—	—	400	800	2,800
Ia.	—	—	—	—	—	—	—	200	—	—	—	—	200
Mich.	7,265	5,220	5,932	8,400	4,975	2,600	5,420	7,879	4,765	3,495	8,353	7,220	71,515
Minn.	—	—	—	—	—	—	995	2,000	—	—	4,769	1,169	8,933
Miss.	—	—	—	—	—	—	—	—	—	—	290	—	200
Mo.	603	1,006	803	—	626	1,200	6,071	9,459	5,056	3,281	5,818	6,395	40,318
Ohio	2,771	2,400	3,400	3,000	2,200	400	200	979	200	2,725	2,215	600	21,090
Tenn.	850	100	100	—	108	200	1,898	3,400	1,800	1,800	1,300	600	12,148
Wis.	1,600	2,000	800	—	4,000	2,400	10,261	14,176	8,603	4,800	10,001	8,411	66,852
Canada	408	207	460	322	1,428	3,148	2,130	1,862	1,860	1,308	1,032	642	14,807
Total	40,050	32,739	41,942	47,003	57,832	56,549	63,963	64,827	45,570	33,314	48,493	40,854	578,136

Compiled from reports of the Bureau of Agricultural Economics.

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TABLE E

Receipts of condensed milk (fresh) at Boston and Metropolitan  
Area by States of origin, by years 1932-1937

State	1932		1933		1934		1935		1936		1937	
	40-qt. units											
Vermont	23,446		15,335		10,512		15,704		32,204		32,026	
New York	23,106		14,214		22,965		20,071		36,920		64,188	
Maine	607		191		1,243		762		788		3,652	
New Hampshire	6,010		12,125		13,911		13,895		23,979		8,408	
Massachusetts	2		—		—		—		—		—	
Michigan	—		450		—		758		1,250		1,340	
Ohio	—		—		—		—		—		—	1,325
Indiana	—		—		325		—		—		—	—
Pennsylvania	—		—		400		—		—		—	—
Tennessee	—		—		647		—		—		—	—
Wisconsin	—		—		400		—		—		—	—
Total	53,171		44,087		48,631		51,187		95,121		110,939	

Compiled from reports of the Bureau of Agricultural Economics.

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TABLE F  
 CONDENSED MILK (FRESH): Receipts at Boston and Metropolitan Area  
 by States of origin, by months, 1937

State of origin	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total
	40-qt. units												
Vt.	58	153	2,961	5,309	4,615	3,880	5,280	3,388	2,971	1,746	211	1,454	32,026
N. Y.	6,959	5,977	5,034	3,752	5,150	4,275	7,444	10,002	3,718	2,819	5,125	3,963	64,188
Maine	—	—	—	—	6	1,201	625	343	763	702	12	—	3,652
N. H.	—	—	—	—	1,766	3,376	1,107	441	719	799	—	—	8,408
Mich.	1,000	—	—	—	—	—	280	—	—	—	—	60	1,340
Ohio	—	—	—	—	—	—	—	500	—	—	825	—	1,352
Total	8,017	6,130	7,965	9,061	11,537	12,932	14,736	14,674	8,171	6,066	6,173	5,477	110,939

Compiled from reports of the Bureau of Agricultural Economics.

24. A rough approximation of the formulae for conversion of 40-quart cans or quarts into pounds or hundred-weight is as follows: A 40-quart can or jug of milk will contain 85 pounds of whole milk. One hundred pounds of milk (*i.e.*, a hundredweight) is equivalent to 46.5 quarts. One quart contains 2.15 pounds. The amount of butterfat in milk or cream is expressed in percent. Thus, 40% cream has 40 pounds of butterfat in 100 pounds of cream and so-called "3.7 milk" has 3.7 pounds of butterfat in 100 pounds of milk. The "4% milk" equivalent of "40% cream" may be obtained by multiplying the cream volume by 10.

### *III. Secondary Markets*

25. In the New England area, the Boston market is considered as the primary market. All other markets in that area are termed secondary markets. The principal secondary markets in Massachusetts are: Lawrence, Lowell, Worcester, Springfield, Fall River, and New Bedford. The principal secondary markets in Maine are: Portland and vicinity; Auburn and Lewiston, Oxford County; Bangor and vicinity; Kennebeck and Knox Counties; Bath and vicinity; and York County. The principal secondary markets in Vermont are located in the counties of Windham, Windsor, Orange, Lamoille, Washington, and Chittenden. The principal secondary markets in New Hampshire area: Keene and vicinity, Newport and vicinity, Nashua and vicinity, Lake Winnepesaukee region, White Mountain region, Manchester, Portsmouth and vicinity, and Concord and vicinity. The principal secondary market in Rhode Island is Providence.

26. At all times there is a certain amount of milk sold in secondary markets by handlers who operate in the Boston market. Some of the routes served by handlers operating in the Boston market supply both the Boston market and secondary markets. In addition to this there are continuous shipments of special milks and certified milk by handlers operating in the Boston market into the secondary

markets. Also some of the distributors in some of the secondary markets purchase at least part of their supply at all times from handlers who operate in the Boston market. Distributors in secondary markets tend to purchase as nearly as possible an amount of milk equal to their fluid milk sales. They depend upon the Boston market to furnish them with additional milk whenever the demand is abnormal. Furthermore, in the vacation periods in the summertime, *e.g.*, the month of August, Boston dealers continue to serve certain of their customers who go outside the city for the vacation period and they also supply new customers who visit outside market areas during vacation periods. The milk which is sold in the secondary markets by Boston distributors is usually milk which is delivered to country plants which supply the Boston market. The milk, which is sold in the secondary markets, is sold at Class I prices, and the effect of these sales is to absorb a certain amount of the surplus in the Boston market at Class I prices. There is a certain amount of milk sold in secondary markets in all months throughout the year, but the volume varies substantially. These sales in secondary markets have been customary for a number of years in the past.

#### *IV. Importance of Fluid Milk*

27. Fluid milk is a necessary article of diet for children and is an extremely valuable article of diet for adults. Milk provides vitamins which cannot be obtained as easily from other foods.

28. Some indication of the extent of the consumption of fluid milk and cream in the Boston marketing area is found in the reports of the Bureau of Agricultural Economics of the Department of Agriculture of the United States which show that in 1937 a daily average of 616,200 quarts or 1,324,830 pounds of fluid milk and 63,360 quarts or 130,680 pounds of cream were brought by rail and truck into the marketing area. I take judicial notice that the population of the cities and towns constituting the greater

Boston, Massachusetts, marketing area as defined in Article I, Section 1 of Order No. 4, as amended, was 2,001,770 in 1930; 1,730,436 in 1920; and 1,460,256 in 1910.

#### *V. Sanitary Regulations Relating to Milk*

29. The production and distribution of milk are subject to special sanitary regulations imposed by the New England States and by the local subdivisions thereof. (See General Laws of the Commonwealth of Massachusetts, Chapter 94.) So far as these regulations apply to the production of milk they relate to the cleanliness and ventilation of stables and milk houses; the proper equipment for cooling milk and its use; the health, physical well being, and cleanliness of cows; and a number of other circumstances.

30. Section 40 of said Chapter 94 of the General Laws of Massachusetts provides in part as follows:

"No person, except a producer selling milk to other than consumers, or selling not more than twenty quarts per day to consumers, shall deliver, exchange expose for sale or sell or have in his custody or possession with intent so to do any milk, skimmed milk or cream in any town where an inspector of milk is appointed, without obtaining from such inspector a license which shall contain the number thereof, the name, place of business, residence, number of vehicles used by the licensee and the name of each driver or other person employed by him in carrying or selling milk. . . ."

Licenses issued under this section provided that the licensee was authorized "to sell milk according to law and the regulations" of the local municipal health authorities "if the said law and regulations are complied with." As a matter of practice certain of the municipal authorities in the greater Boston marketing area in granting such licenses

to sell milk provided in them that only the milk from certain specified plants of the handler could be sold. Where reference is made herein to plants approved by health authorities, such statement means that the license issued under said section 40 permitted the handler to sell milk from the particular plants in accordance with its terms; and where reference is made to plants not approved by health authorities, the language means that such license did not permit the handler to sell milk from such plants.

#### *VI. Importance of the Dairy Industry*

31. There are about 40,000 producers in the New England States and approximately 18,000 of them are engaged in producing milk for the Boston market. Dairying is the principal agricultural occupation in the State of Vermont. This is also true of some sections of New Hampshire, particularly in the northern part of the State. The dairy industry is likewise important in Maine, particularly in the central part of the State, although it is relatively less important in the State as a whole than in the State of Vermont. The importance of the dairy industry in the four New England States of Maine, New Hampshire, Vermont, and Massachusetts is shown by the following table showing the milk and butterfat produced in such States and the purpose for which it was used in 1934.

Milk and butterfat produced and milk used for each purpose on farms in Maine, New Hampshire, Vermont and Massachusetts, in 1934<sup>1</sup>

Item	State			
	Maine	New Hampshire	Vermont	Massachusetts
Milk cows on farms (thousands)	142	78	264	128
<i>Estimated production per milk cow during year<sup>2</sup>:</i>				
Milk (pounds)	4,420	4,700	4,720	5,525
Butterfat (pounds)	181	183	191	210
Percentage of butterfat in milk produced (percent)	4.1	3.9	4.05	3.8
<i>Total production on farm<sup>3</sup>:</i>				
Milk (million pounds)	628	367	1,246	707
Butterfat (million pounds)	26	14	50	27
<i>Disposition of milk:</i>				
Used as whole milk or cream on farms where produced (million pounds)	72	28	63	51
Used for making butter on farms (million pounds)	156	33	37	14
Whole milk fed to calves (million pounds)	13	8	29	15
Milk skimmed or separated for sale of butterfat (million pounds)	79	9	160	9
Retailed by producers <sup>4</sup> (million pounds)	106	44	58	135
Milk sold at wholesale <sup>4</sup> (million pounds)	202	245	899	483

<sup>1</sup> Preliminary, pending revisions based on the results of the 1935 census enumeration of cows milked, milk production, and farm butter production.

<sup>2</sup> These estimates exclude milk sucked by calves, milk spilled or lost up to the time it is measured, skimmed, or delivered by farmers, and milk produced by cows not on farms.

<sup>3</sup> Approximations based chiefly on the population in small towns and rural areas where most families purchase their milk supply directly from local farmers. Estimates include milk equivalent of cream.

<sup>4</sup> Estimates include milk delivered to creameries, condenseries, factories, and market-milk receiving stations, but exclude market milk sold to other farmers for local retail delivery.

32. I take judicial notice of the facts shown in the following table, on page 93 compiled from the published reports of the Division of Crop and Livestock Estimates, Bureau of Agricultural Economics, which shows the percentage relationship between cash income from dairy products and cash income from all farm production in the above-named New England States in the years 1929 and 1935. I also take judicial notice of the facts shown in the following table, on page 95 compiled from Census Reports of the Department of Commerce, which shows the number and percent of farms reporting cows milked and percent of farms reporting 40 percent or more of their income from dairying in the above-named New England States in the year 1929.

### *VII. Variations in Production*

33. The production of milk varies greatly at different seasons of the year. Normally production reaches the lowest point in November, begins to increase about February, and reaches the peak in June. Considering the amount of milk produced by the number of dairy cows being milked for the Boston market in November as 100, the amount of milk produced by the same number of cows in the month of June would normally be approximately 175; for the month of July, 165; for the month of August, 150; for the month of September, 140; and for October, 130. The reason for this fluctuation in production is that cows normally freshen in the spring and are fed grass which increases the flow of milk. As the pastures begin to dry up, the production of the dairy cow falls off. Occasionally there is a slight bulge in production in October because of the fact that the cows are turned on meadow before being put in the barn. There are also day to day variations in the production of milk. An interval of extremely cold weather in the wintertime or of cold weather accompanied by rain during the summer season shrinks production. Drought, if prolonged sufficiently, will reduce production materially.

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Cash income from all farm production and percentage cash income from dairy products was of cash income from all farm production in the United States and specified States which include the Boston supply area, 1929-1935

Year	Cash income from all farm production				Percent cash income from dairy products was of total cash income from farm production				
	United States 1,000 dollars	Massachu- setts 1,000 dollars	Maine 1,000 dollars	New Hampshire 1,000 dollars	United States 1,000 dollars	Massachu- setts Percent	Maine Percent	New Hampshire Percent	Vermont Percent
1929	10,284,479	79,193	90,970	24,395	49,957	18.0	34.1	17.3	44.8
1930	7,987,606	72,934	66,289	23,442	46,381	20.2	37.0	23.7	46.6
1931	5,795,148	58,732	39,692	18,346	33,770	22.1	37.6	31.9	45.5
1932	4,368,296	45,827	32,659	14,751	28,221	22.6	39.8	32.7	47.3
1933	5,402,094	48,948	48,034	14,942	27,583	18.3	34.6	20.6	43.1
1934	6,225,161	51,138	34,065	16,665	30,214	18.2	37.0	31.3	46.6
1935	7,203,416	60,113	49,095	18,508	36,928	17.9	37.7	24.2	44.1

<sup>1</sup> Includes benefit payments and government purchases.

<sup>2</sup> Preliminary.

Compiled from reports of the Bureau of Agricultural Economics, Division of Crop and Livestock Estimates.

*VIII. Variations in Demand*

34. The demand for milk tends to be relatively inelastic as compared to the supply. There are, however, daily variations in the demand for fluid milk. There is always an increased demand on Saturday because of the fact that customers who buy their milk from stores must buy enough to carry them over the week end. There is also an increased demand on the days preceding holidays for the same reason. During the holiday seasons, such as Thanksgiving and Christmas, there is an increased demand for milk.

35. The weather has an important effect on daily variations in demand and a prolonged hot spell will increase the demand. In the Boston market the demand for milk normally is highest in July and August, and lowest in December. Considering the demand in the month of November again as being represented by the index figure 100, the demand in the months June to December, inclusive, would normally be represented by the following index figures: June, 99; July, 106; August, 103; September, 103; October, 103; November, 100; December, 95.

*IX. Surplus Milk*

36. Since there must always be an adequate supply of fluid milk to supply the demand, and since it is impossible to store fluid milk in flush periods to meet the demand when the supply is low, there must always be a surplus maintained which is in excess of the normal daily demand for milk. Also, because of the fluctuations in daily demand, it is necessary to have a sufficient surplus to meet the peak daily demand at all times in the year. This surplus, which must be carried constantly throughout the year, is sometimes called "go and come surplus" or "necessary surplus." In order to have an adequate supply in November, the period of the year when the supply available for the

BOSTON, MASSACHUSETTS: Number and percent of farms reporting cows milked and number and percent of farms reporting 40% or more income from dairying in the United States and from New England States of Maine, New Hampshire, Vermont and Massachusetts in 1929

State	Total number of farms	Farms reporting cows milked		Farms reporting 40% or more income from dairying	
		Number	Percent of total	Number	Percent of total
Maine	39,006	30,427	78.0	6,596	16.9
New Hampshire	14,906	11,314	75.9	4,332	29.1
Vermont	24,898	21,587	86.7	14,425	57.9
Massachusetts	25,598	17,271	67.5	7,782	30.4
United States	6,288,648	4,615,529	73.4	604,837	9.6

Compiled from Census reports of the Department of Commerce.

Boston market is lowest, it is necessary that there be a production of milk sufficient to furnish the fluid milk supply plus a surplus equal to 20 or 25 percent of the total supply. As has been explained above, the number of cows necessary to produce the fluid milk requirements, including a necessary surplus of 20 to 25% in November, will produce a much larger amount of milk at other seasons of the year. In the year 1937 the surplus in the Boston market was 25% for the month of November and 40 to 42% for the month of August.

37. A part of the surplus milk, that is the milk produced for fluid consumption which is not used for that purpose, is used for the manufacture of ice cream, candy, cheese, etc., but the larger part is separated into cream. Practically all of the cream which is produced from surplus milk is sold as table cream. The greater part of the skim milk which remains after the separation of the cream is manufactured into skim-milk by-products such as casein, although some of it is used for the manufacture of various foods.

#### *X. Classification of Milk According to its Use*

38. Since 1918 some of the milk sold in the Boston market has been sold according to the classifications which were based, in some parts and at some time, upon the purposes for which the milk was used. At other times these classifications were merely bargaining devices which had no relation to the actual use to which the milk was put. The classifications generally used have been Class I and Class II, although the classifications Class IIA and IIB have also been used. The definition of each of these classes has varied from time to time. Order No. 4 as amended defines Class I milk as "all milk sold or distributed as milk, chocolate milk, or flavored milk and all milk not specifically accounted for as Class II milk" (Art. III, Sec. 1, Par. 1); and Class I milk as "Milk specifically accounted for (a) as being sold, distributed, or disposed of other than as milk,

chocolate milk, or flavored milk and (b) as actual plant shrinkage within reasonable limits" (Art. III, Sec. 1, Par. 2). Milk which was not sold under the classified plan was generally sold for a flat price usually announced in advance of the purchase.

39. Class II milk has always brought a substantially lower price in the Boston market than Class I milk. The products of Class II milk sold in the Boston market must compete with similar products of milk produced in other parts of the United States and shipped into the Boston market. Class II milk (as defined in Order No. 4 as amended) must also meet the competition of milk produced in the milkshed for use in manufacturing and not for fluid consumption. Such milk need not be produced in conformity with the strict health regulations applicable to the production of milk for fluid consumption and hence the cost of its production is less than that of the Class II milk which meets such requirements and with which it competes. In short, the price of Class II milk in the Boston market has in the past depended upon economic factors operating in the entire United States and, to a more limited extent, in the world market.

40. When a farmer delivers his milk to a receiving station qualified to ship fluid milk to the Boston market, neither he nor the handler to whom the milk is delivered knows how much of that particular milk is to be sold as Class I and how much is to be sold as Class II milk nor is the farmer ever informed as to the use which is made of the particular milk which he delivers. As to farmers delivering to such stations, no separate class of farmers in the Boston milkshed produces Class II milk. Furthermore, there are no physical or intrinsic characteristics which distinguish Class I milk from Class II milk; the classification is a pricing or bargaining device.

*XI. Competitive Practices*

41. The price of Class I milk has always been higher than the price of Class II milk. There has been a tendency for the farmers in the Boston milkshed to attempt to dispose of the greater part of their milk for fluid purposes. The ratio between the amount of milk sold as Class I and the amount sold as Class II varies among the dealers. The tendency has been for the farmers at any particular time to try to find a market for their milk through handlers who were successful in maintaining a relatively low percentage of surplus milk. A method by which a handler might obtain a low percentage of surplus milk has been by maintaining or increasing the amount of his Class I sales. The evidence shows that one method which dealers have adopted in the Boston market to achieve this result has been to cut retail and wholesale prices. Each dealer naturally wishes to purchase his milk as cheaply as his competitors.

42. In 1922 the fact that the chain stores were able to obtain milk at lower prices than those of the largest co-operative organization, led to a decline in price. Again in December 1926 the action of one co-operative organization in the market in selling milk to a chain store at a reduced price led to a general decline in the market which continued into July of the following year. Beginning in October 1927 the Class II price for milk delivered by members of New England Milk Producers Association was changed from a single price to two prices called the Class II-A price and the Class II-B price. For a period of from three to six months after October 1927, prices were stable but then price discounts began again and the price received by the farmers again declined.

43. There was a decline in milk prices commencing late in 1930 and continuing through the early months of 1933. In 1930 competition between producer groups resulted in price cutting and this precipitated a decline in the price to producers. Late in 1931 and early in 1932 prices again declined in the Boston market. Beginning on January 1,

1933, there was a further decline in price. Commencing January 1, 1933, New England Milk Producers Association, the largest cooperative organization in the market, sold its milk to the dealers at a monthly price under an agreement which provided for arbitration or agreement on the discounts, if any, which should be given at the end of the period. The purpose of the discounts was to meet the competition of other groups which were selling milk in the market at reduced prices. At this time there was no uniform price in the market and substantial amounts of milk were being sold at a price lower than the price announced by New England Milk Producers Association and the distributors insisted that the Association meet the competition of the lower prices. For example, New England Milk Producers Association announced a price for the month of January 1933 of six cents per quart for Class I milk delivered to Boston. At the end of the month that price was adjusted to five and one-half cents per quart to meet the competition of milk which was coming into the market at a lower price. For the months of February, March, April, and May of that year the price was reduced to five cents per quart and an additional adjustment of twenty-seven cents per hundredweight, slightly more than one-half cent per quart, was made at the end of each month. In June and July the price returned to six cents per quart but another adjustment of thirty-seven cents per hundredweight, which is approximately four-fifths of a cent per quart, was deducted at the end of the month. The price reductions granted by New England Milk Producers Association referred to above, were necessary despite the fact that at this time New England Milk Producers Association controlled sixty-odd percent of the milk supply for the Boston market and that the other producer groups whose competition New England Milk Producers Association was compelled to meet controlled only approximately thirty percent of the milk in the market.

44. At times the price decreases to the farmers referred to in paragraph 43 of this report were not accompanied

by equivalent decreases in the price to consumers. For example, in December 1932 the price to the consumer for fluid milk was eleven cents per quart and despite the adjustment made in the price to the farmer for the month of January, the consumer price remained unchanged during that month. Again, beginning in February and continuing until May, the price to the farmer which had been reduced to five cents a quart was adjusted at the end of each month by the deduction of twenty-seven cents per hundred-weight, but the price to the consumer throughout this period never went below ten cents per quart. In July 1933 the price to the producer was 5.2 cents per quart, a reduction of 0.8 cents per quart from December 1932 while the price to the consumer in July was eleven cents per quart, the same price which had been in effect in December 1932. The average Class I price to producers for the years 1928 to 1930 was \$4.07 per hundredweight, or 8.8 cents per quart, and the average price to consumers for the same years was 15.3 cents per quart. In 1932 the Class I price had fallen to \$2.55 per hundredweight, or 5.5 cents per quart, a reduction of 3.3 cents per quart, while the price to consumers had dropped to 10.5 cents, a reduction of 4.8 cents per quart. These statistics are set forth in the following table:

	Per Quart Price		
	1928-1930	1933	Amount of Reduction
Class I Price (To producers)	8.8	5.5	3.3
Consumer Price	15.3	10.5	4.8

45. The evidence also indicates that on three different occasions between 1916 and 1936 disputes have arisen between groups of producers and handlers in the market with respect to the marketing of milk with the result that certain groups of producers have withheld milk from certain

distributors. One of these so-called "milk strikes" occurred in 1916, another in 1921, and the third began in December 1936, and continued into 1937. As a result of the strike in 1916, milk was withdrawn from the Boston market but returned after the strike terminated. The strike in 1921 also resulted in the withdrawal of milk from the Boston market. The milk so withdrawn came from the States of Maine, New Hampshire, Vermont, New York, and, to some extent, Massachusetts. The strike in 1921, however, was directed against only one distributor although it ultimately affected other distributors. The strike in 1936 and 1937 was a strike directed against the Hood Company and the Whiting Company. As a result of that strike some handlers in the market found it necessary to obtain their supplies of fluid milk from areas in Vermont and New York which normally shipped to the New York market. There was no evidence of any violence in connection with any of these disputes, nor was there any evidence that the volume of milk moving interstate was diminished nor that the volume of milk moving into the marketing area was diminished. In December 1936 New England Dairies ordered the producers whose milk it marketed to withdraw deliveries of their milk from the Hood and Whiting Companies. This order included the milk of members of New England Milk Producers Association, then marketing through New England Dairies and at this time controlling about 60% of the Boston milk supply. The milk which was withdrawn from the Hood and Whiting Companies, New England Dairies, was unable to sell in the Boston market at the Class I price. Consequently, it was forced to utilize it largely at the Class II prices. Such utilization returned a much lower price to producers whose milk was marketed by New England Dairies than the prices which were being received at the same time by producers continuing to sell to the Hood and Whiting Companies, who enjoyed the price advantage of selling to dealers with a large percentage of Class I sales. During the first seven months of 1937, the

percentage of surplus which New England Dairies carried was greater than the average for the market.

46. Throughout the period from 1920 to 1936, New England Milk Producers Association marketed approximately sixty percent of the milk in the Boston market. Beginning on January 1, 1937, the percentage of the market controlled by New England Milk Producers Association and the other cooperatives associated together in New England Dairies, Inc., has dropped to between 30 and 40 percent.

47. The following table shows the Class I and Class II prices for 3.7 milk delivered in the 181-200 mile zone for each month between May 1918 and August 1, 1937, and the weighted average net blended price per hundredweight for 3.7 milk in the 181-200 mile zone to members of the New England Milk Producers Association and of New England Dairies, Inc., for each month between January 1918 and August 1, 1937.

## Prices Per Cwt. 3.7% Milk Boston Market

191-200 Mile Zone

Without Deduction of Dues

N.E.M.P.A.: May 1918 - June 1933

New England Dairies, Inc.: July 1933 - December 1936

## 1918

	Class I	Class II	Composite	Dues
May	\$ 3.07	\$ 1.51	\$ 2.55	\$ .01
June	2.96	1.79	2.46	.01
July	3.16	1.80	2.80	.01
August	3.39	1.84	3.10	.01
September	3.39	2.58	3.19	.01
October	3.74	2.55	3.56	.01
November	3.92	3.40	3.92	.02
December	3.91	2.87	3.91	.01
May - Dec.	3.44	2.29	3.19	.01

## 1919

January	3.91	2.73	3.68	.01
February	3.85	2.11	3.37	.01
March	3.80	2.25	3.23	.01
April	3.68	2.44	3.15	.01
May	3.27	2.32	2.83	.01
June	3.04	2.45	2.74	.01
July	3.33	2.59	3.06	.01
August	3.56	2.87	3.35	.01
September	3.56	2.84	3.36	.01
October	3.81	3.22	3.59	.02
November	4.04	3.43	4.04	.02
December	4.04	3.33	4.04	.02
Year	3.66	2.72	3.37	.01

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1920

	Class I	Class II	Composite	Dues
January	4.03	2.60	3.71	.01
February	4.03	2.55	3.58	.01
March	3.91	2.88	3.62	.01
April	3.83	2.71	3.45	.01
May	3.48	2.53	3.11	.01
June	3.48	2.29	2.95	.01
July	3.72	1.99	3.25	.01
August	3.95	2.11	3.56	.01
September	4.10	2.45	3.55	.01
October	4.10	2.27	3.57	.01
November	4.10	2.55	3.54	.01
December	4.10	2.00	3.44	.01
Year	3.90	2.41	3.44	.01

1921

January	3.64	1.94	3.02	.01
February	3.40	1.51	2.64	.01
March	3.06	1.59	2.42	.01
April	3.06	1.50	2.30	.01
May	2.94	.98	1.93	.01
June	2.94	1.01	1.94	.01
July	2.94	1.31	2.36	.01
August	3.40	1.55	2.71	.01
September	3.40	1.59	2.83	.01
October	3.40	1.61	2.81	.01
November	3.40	1.56	2.84	.01
December	3.17	1.62	2.61	.01
Year	3.23	1.48	2.53	.01

1922

January	2.50	1.36	2.12	.01
February	2.50	1.34	2.08	.01
March	2.50	1.41	2.08	.01
April	2.27	1.40	1.92	.01
May	2.27	1.35	1.87	.01
June	2.27	1.36	1.86	.01
July	2.73	1.32	2.16	.01
August	2.73	1.30	2.28	.01
September	2.73	1.64	2.40	.01
October	3.20	1.68	2.69	.01
November	3.20	1.88	2.85	.01
December	3.20	2.23	2.86	.01
Year	2.68	1.52	2.26	.01

1923

	Class I	Class II	Composite	Dues
January	3.20	2.12	2.79	.01
February	3.20	2.08	2.75	.01
March	3.20	2.09	2.72	.01
April	2.73	1.94	2.28	.01
May	2.73	1.72	2.20	.01
June	2.73	1.60	2.13	.01
July	2.96	1.59	2.31	.01
August	3.20	1.91	2.68	.01
September	3.20	2.02	2.78	.01
October	3.20	2.08	2.82	.01
November	3.57	2.28	3.10	.01
December	3.36	2.34	2.98	.01
Year	3.11	1.98	2.63	.01

1924

January	3.20	2.33	2.86	.01
February	2.73	1.99	2.44	.01
March	2.27	1.81	2.11	.01
April	2.04	1.44	1.80	.01
May	2.04	1.44	1.78	.01
June	2.04	1.53	1.82	.01
July	2.51	1.49	2.14	.01
August	2.73	1.41	2.34	.01
September	3.20	1.40	2.50	.01
October	3.20	1.40	2.58	.01
November	3.20	1.55	2.68	.01
December	3.20	1.68	2.68	.01
Year	2.70	1.62	2.31	.01

1925

January	3.20	1.47	2.59	.01
February	3.20	1.52	2.54	.01
March	2.73	1.78	2.31	.01
April	2.73	1.71	2.28	.01
May	2.50	1.61	2.06	.01
June	2.50	1.62	2.06	.01
July	2.96	1.64	2.33	.01
August	3.20	1.66	2.58	.01
September	3.20	1.82	2.70	.01
October	3.20	1.94	2.80	.01
November	3.20	1.93	2.81	.01
December	3.20	1.88	2.74	.01
Year	2.99	1.72	2.49	.01

## Master's Report

1926

	Class I	Class II	Composite	Dues
January	\$ 3.20	\$ 1.71	\$ 2.65	.01
February	3.20	1.72	2.64	.01
March	3.20	1.62	2.52	.01
April	3.20	1.48	2.39	.01
May	3.20	1.58	2.35	.01
June	2.73	1.55	2.06	.01
July	3.20	1.52	2.36	.01
August	3.20	1.56	2.46	.01
September	3.20	1.69	2.57	.01
October	2.96	1.76	2.51	.01
November	3.31	1.84	2.83	.01
December	3.32	2.07	2.83	.01
Year	3.16	1.67	2.51	.01

1927

January	2.97	1.89	2.56	.01
February	2.97	2.11	2.62	.01
March	2.97	2.07	2.59	.01
April	2.97	2.07	2.53	.01
May	2.97	1.75	2.27	.01
June	2.93	1.60	2.15	.01
July	3.03	1.56	2.30	.01
August	3.37	1.57	2.56	.01
September	3.59	1.75	2.80	.01
October	3.43	2.01	2.88	.01
November	3.55	2.10	3.02	.02
December	3.72	2.19	3.09	.01
Year	3.21	1.89	2.61	.01

1928

January	3.50	2.04	2.93	.02
February	3.38	2.00	2.81	.02
March	3.38	2.07	2.77	.02
April	2.92	1.89	2.38	.02
May	2.92	1.77	2.26	.02
June	2.92	1.71	2.17	.02
July	3.16	1.84	2.48	.02
August	3.38	2.01	2.79	.02
September	3.38	2.09	2.75	.02
October	3.38	2.04	2.86	.02
November	3.38	2.21	3.14	.02
December	3.38	2.21	3.04	.02
Year	3.26	1.99	2.70	.02

1929

	<i>Class I</i>	<i>Class II</i>	<i>Composite</i>	<i>Dues</i>
January	\$ 3.38	\$ 2.00	\$ 3.02	.02
February	3.38	2.09	3.02	.02
March	3.38	2.04	2.92	.02
April	3.38	1.90	2.71	.02
May	3.38	1.73	2.53	.02
June	2.92	1.80	2.28	.02
July	3.38	1.75	2.56	.02
August	3.38	1.87	2.77	.02
September	3.38	2.01	2.84	.02
October	3.38	2.01	2.81	.02
November	3.38	1.88	2.83	.02
December	3.38	1.82	2.66	.02
Year	3.34	1.91	2.75	.02

1930

January	3.38	1.47	2.49	.02
February	3.38	1.39	2.45	.02
March	3.38	1.45	2.43	.02
April	3.38	1.53	2.42	.02
May	3.14	1.56	2.29	.02
June	2.92	1.48	2.14	.02
July	3.10	1.50	2.36	.02
August	3.38	1.71	2.66	.02
September	3.38	1.76	2.75	.02
October	3.38	1.76	2.62	.02
November	3.15	1.59	2.46	.02
December	2.81	1.43	2.14	.02
Year	3.23	1.55	2.43	.02

1931

January	2.45	1.27	1.94	.02
February	1.99	1.27	1.72	.02
March	1.99	1.29	1.73	.02
April	2.00	1.18	1.69	.03
May	2.00	1.07	1.61	.03
June	2.00	1.06	1.57	.03
July	1.77	1.12	1.61	.03
August	2.23	1.25	1.91	.03
September	2.46	1.43	2.13	.03
October	2.46	1.50	2.08	.03
November	2.00	1.38	1.83	.03
December	1.62	1.37	1.51	.03
Year	2.08	1.27	1.78	.03

1932

	Class I	Class II	Composite	Dues
January	\$ 1.53	\$ 1.08	\$ 1.41	.03
February	1.53	1.03	1.39	.03
March	1.53	1.02	1.36	.03
April	1.53	.91	1.34	.03
May	1.74	.85	1.50	.03
June	1.53	.77	1.24	.03
July	1.79	.84	1.60	.03
August	2.00	.91	1.83	.03
September	2.05	.94	1.71	.03
October	2.05	.93	1.71	.03
November	2.05	1.05	1.83	.03
December	2.05	1.09	1.63	.03
Year	1.78	.95	1.56	.03

1933

January	1.80	.78	1.49	.03
February	1.31	.73	1.16	.03
March	1.31	.72	1.15	.03
April	1.31	.83	1.16	.03
May	1.35	.91	1.18	.03
June	1.70	1.04	1.40	.05
July	1.70	1.12	1.50	.05
August	2.07	1.31	1.82	.07
September	2.15	1.02	1.70	.10
October	2.15	.88	1.60	.10
November	2.29	1.09	1.91	.10
December	2.29	.92	1.85	.10
Year	1.79	.95	1.49	.06

1934

January	2.29	.91	1.85	.10
February	2.29	1.25	1.95	.10
March	2.16	1.10	1.72	.10
April	2.37	1.07	1.80	.10
May	2.36	1.06	1.64	.10
June	2.34	1.07	1.62	.10
July	2.34	1.11	1.79	.10
August	2.34	1.22	1.90	.10
September	2.34	1.13	1.88	.10
October	2.65	1.08	2.01	.10
November	2.65	1.27	2.18	.10
December	2.65	1.42	2.20	.10
Year	2.40	1.14	1.88	.10

## 1935

	Class I	Class II	Composite	Dues
January	\$ 2.65	\$ 1.48	\$ 2.21	.10
February	2.69	1.68	2.34	.10
March	2.88	1.60	2.27	.10
April	2.88	1.62	2.16	.10
May	2.88	1.28	1.89	.10
June	2.88	1.07	1.67	.10
July	2.58	1.05	1.67	.10
August	2.30	1.05	1.61	.10
September	2.30	1.03	1.65	.10
October	2.30	1.16	1.72	.10
November	2.30	1.53	1.98	.10
December	2.30	1.56	2.03	.10
Year	2.58	1.34	1.93	.10

## 1936

January	2.30	1.47	1.94	.10
February	2.61	1.58	2.12	.10
March	2.73	1.48	2.00	.10
April	2.73	1.38	1.90	.10
May	2.73	1.23	1.70	.10
June	2.73	1.20	1.64	.10
July	2.73	1.65	2.10	.10
August	2.25	1.87	2.07	.10
September	2.25	1.87	2.07	.10
October	2.25	1.62	1.97	.10
November	2.25	1.67	2.00	.10
December	2.25	1.72	1.87	.10
Year	2.48	1.56	1.95	.10

## 1937

January		1.65	.10
February		1.65	.10
March		1.62	.10
April		1.50	.10
May		1.42	.10
June		1.40	.10
July		1.60	.10

48. It is agreed by the parties that the price trends in the Boston market have followed price trends in other milk markets throughout the United States.

### *XII. The History of Dairying in New England*

49. The evidence shows that there has been a marked change in farming practices in the New England States during the past fifty years. Before 1890 farming was largely of the diversified type, consisting of cultivation of small grains and raising livestock. However, the principal type of farming at that time was dairy farming. For the most part, the dairy farming then consisted of buttermaking on the farm.

50. In 1898 the dairy farming carried on in most of the New England area continued to be the production of milk for cream or for butter purposes, but marketing methods had changed. The milk was delivered as whole milk to a local creamery where it was separated and the buttermilk marketed as cream or butter. The skim milk was received back from the creamery after separation and returned to the farm for feed.

51. About 1910, hand separators became common in the New England area and farmers began separating their cream at the farm and delivering the cream to the local creameries, keeping the skim milk at the farm for feed. About the same time farmers were discontinuing raising small grains and were beginning to raise mostly hay and corn for ensilage. This type of farming continued up until about 1920.

52. About 1920, the farmers in some portions of the milkshed began shifting to the production of milk for the fluid milk market. Among the factors involved in this change were the attractiveness of the price for fluid milk and the building of better roads through rural areas. However, starting about 1920, or a little before, a number of the cooperative creameries operating throughout Vermont and neighboring areas enlarged their plants and commenced

receiving whole milk for shipment to the Boston market. The cause of this was the fact that the immediate cash return was greater from shipping whole milk than from selling cream.

53. The change among the farmers of Vermont to the production of fluid milk in the years since 1914 is illustrated by the table on page 113 which shows the percentage of milk shipped as fluid milk from licensed dairy plants in the State of Vermont in each year between 1914 and 1935.

54. At the present time the principal form of agriculture in Vermont and neighboring areas is the production of milk for sale as whole milk. A considerable amount of the land in Vermont that was once under cultivation is used for pasture or has been allowed to go to undergrowth. Quite a bit of small grain is raised in northwestern Vermont around the Lake Champlain region. In other sections the better land is devoted to raising hay and dairy cattle. Most of the concentrated feeds which are fed to the dairy cattle now, such as the small grains, are purchased on the market. The profitability of dairy farming in Vermont is now largely dependent upon the price that can be obtained for milk. (The facts with respect to butter plants, so far as they are material, are shown in the table which is appended as Exhibit 1 together with the explanatory letter, which is marked Exhibit 1a.)

55. With the change over from cream production to the production of milk for fluid purposes, considerable expenditures were required on the part of farmers to meet health regulations governing the production of milk which was to be sold for fluid purposes. In order to meet these health requirements a farmer must install cooling equipment. The operation of this cooling equipment involves additional expense for electric current if the farmer uses mechanical refrigeration or for ice if he does not use mechanical refrigeration. Additional expense is also imposed by reason of the fact that the tables must be cleaned out more frequently and that the farmer must use small top, seamless milk pails.

The evidence discloses that due to the cost of complying with health regulations it costs from 35 to 50 cents per hundredweight more to produce milk for fluid purposes than it does to produce milk for manufacturing purposes or for cream. The evidence also indicates that as a result of the changes which occurred in the health regulations applicable to the production of milk for fluid purposes, the additional cost per hundredweight in 1933 of producing milk for fluid consumption was at least 50 cents per hundredweight over what it was in the period from 1910 to 1914.

### *XIII. Distributing Agencies*

#### *A. Cooperative Associations*

56. The handlers operating in the Boston market include both cooperative organizations of producers and proprietary dealers. The cooperative organizations of producers include bargaining cooperatives whose primary function is to bargain on behalf of their members with the distributors as to the sale price of milk. New England Milk Producers Association is this type of cooperative. There are also cooperative organizations which not only bargain with distributors as to the sale of the milk delivered by members but which also own and operate facilities for the handling and processing of milk. Some of these cooperative organizations such as New England Dairies, Inc. engage in no distribution activities but sell all the milk of their members to proprietary dealers who sell and distribute the milk in the marketing area. Others sell both to distributors and also at wholesale to stores which in turn sell the milk in the marketing area.

57. There are also cooperative organizations, such as Milton Cooperative, which receive, process, and bottle the milk of their producers and distribute it in the marketing area through owned or controlled organizations. One cooperative organization operating in the milkshed, Bellows Falls Cooperative Creamery Company, bottles some of the milk and cream of its members and sells all of such milk

Percentage distribution of total milk and cream receipts in Vermont licensed dairy plants

Year	Fluid milk shipped	Made into butter	Made into Cheddar cheese	Made into condensed and evaporated milk	Shipped as sweet cream	Made into ice cream and mix	Fluid milk and cream sold locally	Made into cream and other soft cheese
1914	19.4	57.3	2.9	—	20.4	—	—	—
1915	19.1	56.1	2.9	—	21.8	—	—	—
1916	19.4	46.1	2.9	—	26.1	—	—	—
1917	23.5	37.2	3.3	8.0	28.0	—	—	—
1918	26.6	36.0	2.6	5.8	26.0	—	—	—
1919	28.3	33.3	4.6	9.7	24.1	—	—	—
1920	27.6	34.8	4.4	5.1	28.1	—	—	—
1921	25.6	36.2	3.1	4.0	31.1	—	—	—
1922	30.3	32.1	2.0	1.7	33.9	—	—	—
1923	33.1	27.6	2.1	3.3	33.9	—	—	—
1924	34.8	26.0	1.5	2.5	35.2	—	—	—
1925	41.0	20.5	1.2	3.3	34.0	—	—	—
1926	40.37	14.76	1.35	3.49	38.03	2.00	—	—
1927	45.19	14.26	.92	1.53	36.89	1.21	—	—
1928	46.04	12.64	1.10	2.15	35.33	1.81	.87	.06
1929	51.91	10.17	.71	1.33	33.92	1.37	.55	.04
1930	45.42	8.84	.95	.87	41.48	.96	.98	.50
1931	50.28	7.17	.51	1.01	39.44	.63	.84	.12
1932	51.20	5.83	.30	.19	40.94	.73	.66	.15
1933	47.88	5.09	.76	.27	45.07	.21	.57	.15
1934	46.77	4.23	.31	—	47.18	.22	1.11	.18
1935	44.48	5.38	.73	.02	47.80	.18	1.37	.04

and cream through a single distributing outlet in the Boston market, *i. e.*, First National Stores.

58. The cooperative, New England Dairies, Inc., acts as the sales agent for a number of independent cooperative organizations including New England Milk Producers Association. In addition New England Dairies operates certain plants which it owns or leases and also acts as sales agent for other plants. New England Dairies, Inc. has some individual farmers as members, such members being known as direct members. New England Dairies, Inc. is the bargaining agent for the members of New England Milk Producers Association who are delivering to proprietary handlers in the market. There are at the present time twelve cooperative organizations that are members of New England Dairies, Inc. On January 1, 1936, New England Dairies, Inc. controlled approximately 75% of the total milk coming into the greater Boston marketing area. Between that date and the first of January, 1938, the percentage of milk controlled by New England Dairies, Inc. has decreased to 30 or 40%.

59. During the period from May 1, 1937, throughout the remainder of the year, 1937, all milk received by New England Dairies, Inc. from producers was received from persons with whom New England Dairies, Inc. had contracts in one or another of the forms annexed hereto and marked Exhibits 2, 2a, 2b, 2c and 2d. All other milk marketed by New England Dairies, Inc. was sold by it as sales agent for other cooperative associations with whom New England Dairies, Inc. had contracts in substantially the same form as the one annexed hereto and marked Exhibit 3. During the calendar year 1937, all milk marketed by New England Dairies, Inc. for members of New England Milk Producers Association in the Boston market was received from producers with whom either New England Milk Producers Association alone or New England Milk Producers Association in conjunction with New England Dairies, Inc. had contracts in one or another of the forms annexed hereto and marked Exhibits 4, 4a, 4b, 4c and 4d. The Articles of Incorporation

of New England Dairies, Inc. and its by-laws are appended to this report as Exhibit 5. The Articles of Incorporation of New England Milk Producers Association and its by-laws are appended to this report as Exhibit 6.

60. The United Farmers Cooperative Creamery Association, a cooperative association in the Boston milkshed, physically operates country receiving stations at Randolph, Troy, Greensboro, Morrisville, and East Berkshire, Vermont. It engages in distribution of the product of its members in the marketing area by selling not only at wholesale to persons, firms, and corporations who resell such milk, but also at retail to consumers. The persons, firms, and corporations who resell in the greater Boston marketing area the milk purchased from United Farmers do so in competition with the defendants. In its direct sales to consumers, United Farmers also competes with all the defendants. The Bellows Falls Cooperative Association sells the product of its member producers in the marketing area to the First National Stores, a retail distributing concern selling milk at stores both in Massachusetts and in other states. This concern is the exclusive outlet of the Bellows Falls Cooperative in the Boston area for that portion of its milk or cream which it has bottled. The First National Stores resell this milk and cream in the greater Boston marketing area in competition with the defendants. The Milton Cooperative Dairy Corporation distributes the milk of its members in the marketing area in part through a distributor whose business the cooperative controls. The Caledonia County Cooperative Creamery is a cooperative association of producers in the Boston milkshed. It sells milk or cream to Morgan Brothers, a Massachusetts corporation having places of business in the marketing area. Morgan Brothers resell this milk and cream in competition in the greater Boston marketing area with the defendants. In each delivery period between July 1, 1937, and December 31, 1937, New England Dairies, Inc. has sold milk and cream in the greater Boston marketing area in competition with the defendants in the instant cases.

61. The table on page 117 shows for New England Dairies, Inc., Milton Cooperative Dairy Corporation, and United Farmers Cooperative Creamery Association, Inc. the number of pounds of milk reported to the Market Administrator as sold for Class I purposes and the number of pounds reported as sold for Class II purposes by each cooperative in each delivery period between August 1 and December 31, 1937.

New England Dairies, Inc. receipts of milk as reported to the Market Administrator in the periods above referred to and included by him in the computation of the blended price include the milk received from its individual producer members as well as the milk which it markets for other cooperative associations as described in Paragraphs 59 and 73.

#### B. Proprietary Handlers

62. The proprietary handlers operating in the market, *i. e.*, those which are not cooperative associations, are organizations which are owned either by individuals or by corporations. Some of the proprietary organizations are country creameries which make a business of receiving milk from producers and reselling it to distributors in the city. The functions of such creameries are to receive, weigh, sample, test, jug, and ship the milk. This was a form of operation which was more common prior to 1933 than it is at the present time. A more common form of operation is for the handler who distributes milk at retail in the city to operate a receiving station in the country where milk is received from producers.

63. The evidence shows that the proprietary dealers in the Boston market fall into fairly well defined categories. From the point of view of the volume of their operations the dealers may be classified as follows: (1) The large handlers who require at least 10,000 quarts or a carload of fluid milk per day for sales purposes; (2) small dealers whose sales requirements for fluid milk amount to less than one thousand quarts per day; and (3) the medium sized

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		New England Dairies			Milton Co-op.			United Farmers	
		Net Class I	Net Class II	Net Class I	Net Class II	Net Class I	Net Class II	Net Class I	Net Class II
1937									
Aug.	1-15	2,867,103	6,421,757	954,563	1,698,667	1,938,988	2,593,699		
	16-31	2,769,965	6,901,550	1,056,169	1,742,089	2,106,385	2,534,271		
Sept.	1-15	2,093,722	7,247,943	859,803	1,756,089	1,853,398	2,518,121		
	16-30	1,886,484	7,367,918	816,933	1,748,367	1,670,569	2,699,958		
Oct.	1-15	1,845,599	7,124,457	887,021	1,513,315	1,795,168	2,484,741		
	16-31	2,644,812	5,706,267	1,189,044	1,027,837	2,100,592	1,757,002		
Nov.	1-15	3,903,656	2,947,324	1,153,337	614,628	1,854,733	1,124,487		
	16-30	4,069,537	2,618,979	1,120,041	550,934	1,625,438	1,189,089		
Dec.	1-15	3,362,376	3,514,493	1,030,188	660,497	1,638,757	1,200,367		
	16-31	3,112,532	4,598,002	1,026,700	832,846	1,727,841	1,325,916		
Total		28,555,786	54,448,690	10,093,799	12,145,269	18,311,869	19,427,651		

dealers whose requirements fall between the two limits indicated above. The Hood Company (including the operations of the Noble Company) and the Whiting Company are much larger than any of the other proprietary dealers operating in the market. For example, in the delivery period August 1-15, these two handlers controlled approximately 50 per cent of the Class I sales in the market and approximately 33 per cent of the total sales in the market. Certain of the proprietary dealers operate only in the Boston market and certain others sell both in the Boston market and in the secondary markets. The dealers may also be grouped according to the volume of Class II milk which they normally handle. Among the proprietary dealers the two largest dealers have the largest volume of Class II purchases. Some proprietary dealers receive all or the larger portion of their milk from producers; others buy all or the greater part of their milk from other handlers; some smaller dealers obtain all of their milk from their own farm production.

#### *XIV. Country Receiving Stations*

64. All of the cooperative organizations except New England Milk Producers Association and most of the large proprietary handlers operate country receiving stations. At these receiving stations the milk received from producers is weighed, tested, cooled, and prepared for shipment to market. At stations which handle only fluid milk the milk is received, weighed, tested, cooled, and put in a tank car or some other container for shipment to the market without undergoing further processing of any kind. At some of the country receiving stations there is also equipment for manufacturing operations.

65. A station equipped for handling Class II milk necessarily represents a larger capital investment than a station of the same volume equipped merely to receive and handle fluid milk. Furthermore, there are certain operating costs incident to the operation of a station which handles Class II

milk which are not incurred in handling Class I milk. At stations which are equipped to handle Class II milk, that milk after it is weighed, if it is to be manufactured into cream, must be heated, run through a separator, and the cream then pasteurized, cooled, and jugged. The skim milk which is a by-product of the manufactured cream may be used in various ways. At some plants it is piped into a drier and manufactured into skim milk powder by removing the moisture. Some of the skim milk may be used as buttermilk. Skim milk may also be made into condensed skim milk which is done by heating it to remove the excess water. Condensed skim milk is used primarily in the manufacture of ice cream, candy, and pastries.

66. The evidence shows that the expense of handling milk for Class II purposes is greater than the expense of handling Class I milk. On the other hand, the evidence indicates that in many cases Class II milk is handled in larger volumes than Class I milk and that up to a certain point the greater the volume of Class II milk handled, the lower the unit cost. There appears to be a point, however, after which increased volume does not lead to decreased unit cost. The volume of Class II milk necessary for the operation of plants in sufficient volume to produce the lowest unit cost requires that milk shall be obtained from a wide area, either by trucking directly from the farms over such large area, or by trucking from the farms to intermediate receiving stations, from which it is again trucked to the concentration point. In order to operate a receiving station handling Class I milk as its major product, at a cost of 20 cents per hundred weight, it is necessary to have a volume of at least 250 forty-quart jugs of milk per day.

#### *XV. History of Cooperative Movement*

67. For a number of years cooperative organizations have been an important factor in the New England milkshed. The earliest cooperative organizations were operating cooperatives as distinguished from bargaining cooperatives.

A distinctive feature of the operating cooperative is that it owns or has the use of the physical assets which are used in the handling of the milk. A purely bargaining cooperative does not own such facilities but performs the primary function of entering into agreements with respect to the sale of the milk of its members to proprietary handlers without ever taking physical possession of the milk.

68. In 1890 there was a number of small cooperatives scattered through New England which were of the operating type. These were generally known as cooperative creameries. They were organized by farmers who erected the buildings and established the business. In such creameries the milk was separated, the cream made into butter, and the skim milk and buttermilk taken back to the farms for feed. The condition of the roads and the character of the transportation at that time necessarily limited such organizations to a small size.

69. As early as 1885 there existed a bargaining type of cooperative organization of producers shipping to the Boston market. The members of this cooperative were located in an area extending a little into southern New Hampshire, out as far as Amherst in Massachusetts, and up as far as Berwick in southwestern Maine. The cooperative was an organization of farmers who were trying to find a uniform way of selling milk in Boston.

70. After certain difficulties in 1911 a group of former leaders in cooperative organizations set about to build up an association of farmers in Maine, New Hampshire, Vermont, and Massachusetts who were selling milk for the Boston market. This organization was incorporated in 1917 as New England Milk Producers Association—sometimes called NEMPA. From about 1921 up to about 1936 New England Milk Producers Association had approximately twenty thousand members. On January 1, 1938, New England Milk Producers Association had approximately ten to twelve thousand members. The milk produced by members of New England Milk Producers Association was marketed in Boston and some secondary markets. From 1920

to 1937 New England Milk Producers Association controlled approximately sixty percent of the total milk sold in the Boston Market.

71. Simultaneously with the organization of New England Milk Producers Association in 1917, other cooperatives which had been operating as creameries began handling fluid milk and offering that milk for sale in the Boston market. During the period between 1918 and 1921 several cooperatives were organized and built plants primarily for the purpose of handling fluid milk. These new cooperatives carried on membership drives among the farmers in the New England area. There was also competition among the various cooperatives in attempting to secure a market for their fluid milk.

72. In May 1932 New England Dairies was organized to act as the sales agency for the sale of milk for various of these cooperative organizations. The plan contemplated that New England Dairies would be the central sales agency for all producers selling milk in the market and that this central agency would operate a market-wide pool. The factors leading to the organization of New England Dairies were the decline taking place in milk prices, the lack of a uniform price system in the market, and the lack of any method by which fluid-milk sales in the market could be distributed among the groups of producers selling milk in the market. This plan was never put into operation.

73. In 1933 New England Dairies changed its name to Consolidated Dairies. Of the various cooperatives selling in the Boston market; Clyde Valley Creamery, Granite City Cooperative Creamery, St. Albans Cooperative Creamery, Bethel Cooperative Creamery, and Tunbridge associated themselves with New England Milk Producers Association and became members of Consolidated Dairies in 1933. Consolidated Dairies subsequently changed its name to New England Dairies, Inc. From August 1, 1937, to December 31, 1937, and for some time prior thereto the following cooperatives were associated together as member cooperatives of New England Dairies, Inc.: Bethel Cooperative Cream-

ery, Inc.; Burlington Cooperative Creamery Association, Inc.; Clyde Valley Cooperative Creamery Company, Inc.; Grand Isle County Cooperative Creamery Association, Inc.; Granite City Cooperative Creamery Association, Inc.; Mt. Mansfield Cooperative Creamery and Grain Association; Richmond Cooperative Association, Inc.; St. Albans Cooperative Creamery, Inc.; Shelburne Cooperative Creamery Company; Tunbridge Cooperative Creamery, Inc.; White River Valley Cooperative Creamery Association; and New England Milk Producers Association. New England Dairies, Inc. has 565 individual producer members.

## XVI. Description of Various Marketing Devices

### A. The Use Price Plan

74. The use price plan for purchasing milk is a plan under which the price paid by the handler for milk purchased by him from a farmer or an association of producers is determined by the uses to which the milk is ultimately put. Normally the handler pays for the milk on the basis of one price for the milk used for fluid purposes and a different price for the milk used for other purposes. When a farmer delivers his milk to a handler in the form of whole milk he does not deliver Class I or Class II milk as such. Because the milk of a particular producer is commingled with the milk of many other producers, the handler does not know to what use the milk of the particular producer is ultimately put. Some kind of an equalization or pooling device is therefore an essential part of any use price plan for purchasing milk, except when a handler is purchasing only for a single use.

### B. Equalization Devices

75. One such equalization device is the so-called "dealer pool." In a dealer pool the dealer pays to the producer a price per hundredweight, sometimes called the "blended" or "composite" price. This price is obtained in the following manner: The total number of units sold by such dealer for Class I purposes is multiplied by the Class I price. The

total number of units sold at Class II prices or utilized for Class II purposes is multiplied by the Class II price. These two results are added together and the sum is divided by the total number of units of milk. The resulting quotient is the blended or composite price. It is assumed in this illustration that there are no bases involved in the marketing arrangements.

76. A market-wide pool is an equalization device under which the individual producer is paid for the milk which he sells in accordance with the use made of all the milk sold in the market rather than the use made of the individual producer's milk or the use made of all the milk of the particular dealer to whom the producer delivered. Thus, the blended price or composite price is computed in the case of a market-wide equalization pool by multiplying the amount of all the milk in the market disposed of for Class I purposes by the Class I price and the amount of all the milk disposed of in the market for Class II purposes by the Class II price and dividing the sum of the two resulting figures by the total amount of milk disposed of in the market. The method of computing a blended price in a market-wide equalization pool is illustrated by Findings 124 to 139 *infra* describing the computation of the blended price under Order No. 4 as amended. In this illustration it is assumed that no bases are in effect.

### C. The Flat Price Plan

77. A flat price plan for the purchase of milk is a plan under which a fixed price is paid by the handler to the producers without reference to the use which is actually made of the milk. Normally the flat price is announced in advance of the sale.

## XVII. *History of Certain Marketing Plans and Practices in the Boston Market*

78. From 1909 to 1914, milk was purchased in the Boston market on the flat price plan. The same kind of price plan

prevailed in the market in 1915 and 1916. During 1918 and a part of 1919 the Boston market was under regulation by the Federal Milk Commission. From January 1, 1918, to April 30, 1918, the milk prices were fixed on a flat price basis. The price was announced by the Federal Milk Commission on a per quart f.o.b. Boston basis.

79. The use price plan of purchasing milk was first introduced on an extensive scale in the Boston market beginning May 1, 1918, under a plan promulgated by the Federal Milk Commission which provided during a portion of the time that the plan was in operation for the payment for milk on the basis of one price for the milk sold as fluid milk and an accounting for the proceeds less cost of manufacture for the milk disposed of otherwise than as fluid milk. During two months of the time that the so-called Federal Milk Commission plan was in operation, a flat price was paid for all milk purchased.

80. On March 31, 1919, the Federal Milk Commission went out of existence but the marketing plan which had been followed under its aegis was continued on a voluntary basis by a varying number of distributors and producer organizations. New England Milk Producers Association negotiated with the dealers to whom they sold their milk for a price to be paid for Class I milk and a price to be paid for surplus milk. The prices were fixed on a month-to-month basis. The distributors made reports to an administrator, who used the reports to obtain information as to the purchases and sales, from which he computed a blended price to be paid the producers by each handler on the basis of individual dealer pools. The reports made by the handlers to the Administrator were supposed to show the total amount of milk purchased, the total amount of fluid Class I sales, and, for a time, the particular uses to which the surplus milk was put. For a time distributors handling the major portion of the milk in the market continued to purchase milk under this plan but as time went on, many of the distributors gradually discontinued reporting to the administrator and began purchasing milk on the basis of the blended prices offered by

the distributors who did report and comply with the marketing plan. This general marketing plan continued with variations and deviations until September, 1932 and was in effect at subsequent times until July 1, 1933. Throughout most of this time Dr. A. W. Gilbert was the Administrator to whom the reports were made and who had general supervision of the plan.

81. This marketing plan and its variations involved the use of dealer pools. Some dealers purchasing milk from New England Milk Producers Association accounted to the members on the basis of the particular use which the particular dealer made of all the milk he bought, not only from members of New England Milk Producers Association but also from other farmers. Such dealers also accounted to producers who were not members of New England Milk Producers Association on the basis of the use he made of all the milk he purchased including the milk he received from New England Milk Producers Association.

82. Throughout the period from the discontinuance of the Federal Milk Commission in 1919 up until 1932, class prices for milk were established by negotiation between New England Milk Producers Association and the various distributors handling the milk of New England Milk Producers Association members in the Boston market. In bargaining for the class prices to be paid, New England Milk Producers Association and the dealers to whom they sold negotiated a fixed price to be paid per hundredweight for Class I milk and negotiated a formula which determined the price to be paid for Class II milk. Beginning in October 1927, the Class II price for milk delivered by members of New England Milk Producers Association was divided into Class II A and Class II B, each of which was a negotiated price formula.

83. Throughout the period between May 1, 1918, and November 3, 1933, the Class II price paid for milk delivered by members of New England Milk Producers Association was based on a formula negotiated by that organization and New England Dairies, Inc. with the dealers to whom such milk

was delivered. The following table shows the different formulae used in this period. The formulae shown for the period between November 3, 1933, and February 8, 1936, are formulae prescribed in federal licenses except for the formula used for the first fifteen days in March 1934 which was a negotiated formula.

**Basis of Computation of the Price per  
Hundredweight of Class II Milk  
May 1, 1918, to February 8, 1936**

Period	Basis
May 1, 1918— November 30, 1921	Value of products manufactured from surplus less cost of manufacture.
December 1, 1921— August 31, 1922	(Average butter market price minus \$0.05)* plus 16-2/3% times 3.7.**
September 1, 1922— September 30, 1922	(Average butter market price minus \$0.05) plus 16-2/3% times 3.7 plus \$15.
October 1, 1922— November 30, 1922	(Average butter market price minus \$0.05) plus 16-2/3% times 3.7.
December 1, 1922— July 31, 1923	(Average butter market price minus \$0.05) plus 16-2/3% times 3.7 plus \$15.
August 1, 1923— January 31, 1924	(Average butter market price minus \$0.05) plus 16-2/3% plus \$03-1/2 times 3.7 plus \$15.
February 1, 1924— January 31, 1927	(Average butter market price minus \$0.05) plus 16-2/3% times 3.7.
February 1, 1927— May 31, 1927	(Average butter market price minus \$0.05) plus 16-2/3% times 3.7 plus \$10.
June 1, 1927— September 30, 1927	(Average butter market price minus \$0.05) plus 16-2/3% times 3.7.
October 1, 1927— July 31, 1933	Class II divided arbitrarily between Class II A and Class II B.

\* The "average butter market price" used was a per pound price. During part of the period covered by this table the price was obtained from quotations issued by the Boston Chamber of Commerce and during the remainder of the period the prices were taken from reports issued by the Bureau of Agricultural Economics.

\*\* This whole formula yields what is known as the "butter value."\*

Percent of Class II  
 called Class II A and  
 paid for at: Average  
 butter market price  
 plus 20% times 3.7

Percent of Class II  
 called Class II B  
 and paid for at:  
 Average butter market  
 price minus \$.05 plus  
 16 2/3% times 3.7

October 1, 1927—		
December 31, 1927	100	0
January 1, 1928—		
January 31, 1928	60	40
February 1, 1928—		
February 28, 1928	75	25
March 1, 1928—		
March 31, 1928	60	40
April 1, 1928—		
April 30, 1928	50	50
May 1, 1928—		
May 31, 1928	15	85
June 1, 1928—		
July 15, 1928	10	90
July 16, 1928—		
October 31, 1928	75	25
November 1, 1928—		
December 31, 1928	100	0
January 1, 1929—		
March 31, 1929	60	40
April 1, 1929—		
April 30, 1929	50	50
May 1, 1929—		
May 31, 1929	25	75
June 1, 1929—		
July 31, 1929	50	50
August 1, 1929—		
September 15, 1929	75	25
September 16, 1929—		
December 31, 1929	100	0

January 1, 1930—			
January 16, 1930	50		50
January 16, 1930—			
March 31, 1930	20		80
April 1, 1930—			
May 15, 1930	All Class II paid for at the price of \$1.55		
May 16, 1930—			
June 30, 1930	All Class II paid for at the price of \$1.50		
July 1, 1930—			
August 10, 1930	75		25
August 11, 1930—			
December 31, 1932	100		0
January 1, 1933—			
May 28, 1933	50		50
May 29, 1933—			
July 15, 1933	75		25
July 16, 1933—			
July 31, 1933	100		0
August 1, 1933—			
October 31, 1933	Price quotation for Western cream received in Boston.		
November 3, 1933—			
February 28, 1934	Average butter market price plus 20% times 3.7.		
March 1, 1934—			
March 15, 1934	Price quotation for Western cream received in Boston.		
March 16, 1934—			
April 30, 1934	Average butter market price times 125% times 3.7 f.o.b. city; average butter market price times 120% times 3.7 f.o.b. country.		
May 1, 1934—			
July 16, 1934	Average butter market price times 110% times 3.7 plus \$.085—f.o.b. city.		
July 17, 1934—			
May 17, 1935	Average butter market price times 105% times 3.7 plus \$.085—f.o.b. country.		
May 18, 1935—			
July 15, 1935	Price quotation from Western cream received in Boston divided by 33 times 3.7 minus \$.115—f.o.b. city; less \$.06—f.o.b. country.		
July 16, 1935—			
February 8, 1936	Average butter market price times 115% times 3.7 plus \$.065—f.o.b. city less \$.06—f.o.b. country.		
Price quotation for Western cream received in Boston divided by 33 times 3.7 minus \$.1475—f.o.b. city less \$.06—f.o.b. country.			

84. It will be noted that in some periods covered by the above table the Class II price was computed on the basis of the following factors: The average price for butter minus five cents plus 16 2/3 per cent. The deduction of five cents was an allowance for manufacturing costs and the addition of 16 2/3 per cent was for churn gain (churn gain is the amount by which the weight of butter exceeds the weight of the butterfat used in making that butter). This formula was designed to give a rough approximation of the butter value of milk. It made no allowance for the value of the skim-milk. It will also be noted that in other periods certain amounts ranging from 10 cents to 15 cents per hundredweight were added to the result of this formula. These sums were added to compensate for the values of ingredients other than butterfat in the milk. The factors of the formula largely depended upon the bargaining power of the parties. The division of the Class II milk into two categories, *i. e.*, Class IIA and Class IIB, which prevailed during a part of the period covered by the above table was not based upon any physical differences in the milk but was merely a bargaining device.

85. Attached hereto as Exhibit 7 is a table showing the monthly average wholesale price per pound for butter in the Boston market for the years 1918 to 1936, inclusive.

86. From January 1922 through June 1927 a so-called "cream plan" was in operation in the Boston market. Under this plan producers delivering to certain specified stations, which had formerly been shipping milk into the market, were required to deliver cream instead of whole milk. The producers were paid the blended price for the milk equivalent of the cream less a charge for the skim milk which they kept on the farm. The charge for the skim milk was on a hundredweight basis and varied from time to time. During certain periods of the year when the market required whole milk, farmers were expected to discontinue the delivering of cream and deliver whole milk. There was no evidence as to how much of the milk produced or marketed in the area was affected by this "cream plan".

*XVIII. Proposed Marketing Plans*

87. In 1930 the Commissioners of Agriculture in the states of Maine, New Hampshire, Vermont, and Massachusetts selected a committee for the purpose of holding hearings, taking the evidence of interested parties, and making recommendations from which they hoped to bring about a more orderly and stabilized condition in the Boston market. The committee was known as the New England Milk Board and was comprised of Reginald Bird, Benjamin F. Cleaves and Guy Boyce. This committee, after holding hearings and taking evidence, submitted a report and recommendation in July 1930.

88. One of the recommendations of the New England Milk Board was that a central marketing agency be formed to handle and market the milk of northern New England. The Commissioner of Agriculture for the state of Vermont assisted in the organization of the cooperative which was first organized as New England Dairies and is now known as New England Dairies, Inc. The purpose of New England Dairies was to provide a central sales agency for the sale of milk of the cooperatives who were members of it so as to bring about a uniform basis of price in the market and the promotion of sales for all producer groups. It was intended that New England Dairies should operate a market-wide pool so that all producers selling milk in the market should have a fair share of the fluid milk market. This plan was never consummated.

89. In 1932 producer organizations requested the governors of the New England states to appoint a board to work out a uniform basis for the sale of milk in the Boston market. This board was known as the Governor's Dairy Advisory Board and was composed of F. S. Washburn, Commissioner of Agriculture for the state of Maine; Andrew Felker, Commissioner of Agriculture of New Hampshire; Dr. H. B. Ellenberger, Professor at the University of Vermont; James O'Brien of Massachusetts; and Harry Lewis, Commissioner of Agriculture of Rhode Island. Producer organizations working in conjunction with the Board

proposed a plan in December 1931, which contemplated the establishment of uniform prices for the entire market and a market-wide equalization pool. The plan was not to go into effect unless the assent of 95% of the producer groups in the market was obtained. Since the required assent was not obtained, the plan was never put into effect.

90. In January 1932, another plan was evolved for the establishment of a uniform price to distributors based on the use value of the milk sold in the Boston market. This plan was based upon individual dealer pools. This plan was also to go into effect providing specified groups of producer organizations and distributors approved the plan; it only required the approval of 65% of the producer groups in the market. This plan was put into effect in May 1932 and continued in effect through December 1932. Although all of the cooperatives in the market did not enter into the plan, the organizations following the plan handled approximately 80% of the milk in the Boston market during the period that it was in effect. As a part of this plan, New England Dairies was organized to act as the bargaining agent of the various cooperatives and it negotiated with distributors for a price to be paid for milk. The plan provided for arbitration in the event that New England Dairies was unable to agree with the distributors on a price.

91. In January 1933, various cooperative groups met with Reginald Bird and worked out a plan which was known as the "Bird Plan". Included in this group of cooperatives were New England Milk Producers Association, Clyde Valley, Cabot, Richmond, St. Albans, Granite City, Bethel, and Shelburne which had been associated together in New England Dairies. Bellows Falls Cooperative Creamery and United Farmers also participated in the formation of this plan. The plan contemplated that the distributors should act as the agents of the producers for the distribution of milk and should receive a fixed commission for their services. The plan also contemplated the organization of two groups of cooperatives who were to market their milk through an

overhead central sales agency which was to be New England Dairies, Inc. The central sales agency was to sell the milk of the cooperative organizations at a uniform price and supervise the operation of a market-wide equalization pool for producers. It was in connection with this plan that New England Dairies changed its name to Consolidated Dairies. It was intended that New England Dairies, Inc. should become the central sales agency. This plan did not go into effect because all of the groups of producers involved did not agree.

92. Beginning on June 1, 1933, certain of the cooperative groups in the market, however, did sell their milk through Consolidated Dairies as the central sales agency. From June 1, 1933, until November 3, 1933, when the first federal license went into effect in the Boston market an equalization plan operated in which all milk, delivered by producers who were members of organizations which marketed through Consolidated Dairies, was pooled and paid for on the basis of a uniform blended price.

93. In addition to the investigations which have been referred to in the preceding findings a number of other investigations have been made of conditions in the Boston market between 1915 and 1933 with a view to examining marketing conditions and the price fluctuations which have occurred from time to time and for the purpose of formulating plans to deal with such conditions. In 1916 and 1917 the Boston Chamber of Commerce made such a study and on December 31, 1917, published a report entitled "The Milk Question in New England". In 1921 and 1922, a committee, consisting largely of producers, made an investigation of marketing practices in the market with a view to devising a marketing plan. A similar study was made in 1924 with particular reference to the developments which had taken place in the market between 1921 and 1923. This study was undertaken by a committee which came into existence as a result of a conference at Bellows Falls in 1924 called by the editor of the New England Homestead. Again in 1927 the Commissioners of Agriculture of the states of Maine, New

Hampshire, Vermont, and Massachusetts caused a study to be made with respect to the prices of milk, various suggested marketing plans, and certain proposals which had been made for the handling of surplus milk. As a result of these studies and of investigations made by the Department of Agriculture of the United States, that department published a study entitled "Some Economic Aspects of the Marketing of Milk and Cream in New England".

#### *XIX. History of Recent Federal Regulation in the Boston Market.*

94. On November 3, 1933, certain milk distributors and producer associations operating in the Boston market entered into a marketing agreement with the Secretary of Agriculture as provided in the Agricultural Adjustment Act of 1933. The marketing agreement and the license issued therewith by the Secretary of Agriculture fixed uniform class prices on the use basis, provided for market-wide equalization, and also fixed resale prices for milk. The marketing agreement and license were subsequently terminated and a new license without a marketing agreement was issued which became effective on March 16, 1934. This license provided for fixing class prices on a use basis and for a market-wide equalization pool but did not attempt to fix resale prices. This license was found to be invalid by decision of the District Court for the District of Massachusetts, and subsequently the government consented to a dismissal of its appeal in the Circuit Court of Appeals for the First Circuit. The license was terminated on February 9, 1936. On the same date the Secretary of Agriculture promulgated Order No. 4 (see Finding 6 *supra*).

## PART THREE

## MISCELLANEOUS FINDINGS

*I. Milk Originating in Massachusetts*

95. Of the total amount of milk arriving in Boston as whole milk during the period 1930 to 1936 inclusive, 11% originated in the Commonwealth of Massachusetts. The following table shows the total shipments of whole milk and of fluid cream to the Boston market by rail and truck from points within the Commonwealth of Massachusetts for the years 1932-1936 and for each month in 1937.

Period	MILK		CREAM	
	Receipts (40-qt. units)	Per cent of all milk receipts	Receipts (40-qt. units)	Per cent of all-cream receipts
1932	596,958	9.5	1264	.2
1933	544,091	9.5	1509	.3
1934	530,629	9.2	2202	.4
1935	718,132	12.6	2248	.4
1936	752,030	13.4	1949	.3
1937				
January	62,998		20	
February	59,373		38	
March	67,103		84	
April	68,974		47	
May	75,039		283	
June	71,696		63	
July	62,870		58	
August	59,079		72	
September	58,909		45	
October	61,789		33	
November	54,994		61	
December	61,195		35	
Total	764,019	13.6	839	.1

96. Practically all milk received in Boston from Massachusetts producers is and has been used for Class I purposes. The milk received at Boston from Massachusetts producers is nowhere near enough to meet the Class I demand of the Greater Boston marketing area. In 1937 less than 14 percent of the fluid milk receipts at Boston were from Massachusetts. There is no evidence that price cutting in the Greater Boston marketing area would affect the volume of receipts in that area from Massachusetts producers.

97. There is evidence that there has been a time when a carload of milk, or eighteen to twenty thousand pounds, would drop the wholesale price in the Boston market as much as one cent per quart. This would be true today if there were no regulation of any kind in the market. It is possible that as little as two thousand quarts of milk might affect the price, depending somewhat on the price at which milk was offered and how it was handled.

98. If Order No. 4 as amended should be applied to only part of the milk included in the Boston supply it would be possible for dealers to obtain a competitive advantage by purchasing milk which was not regulated by the order. If that milk which was not regulated by the federal order was produced in Massachusetts and was regulated by the Massachusetts State Control Board at its existing prices, there would be no competitive advantage or disadvantage. In the past, the Hood Company has suffered a competitive disadvantage due to the fact that certain dealers buying all of their milk from producers in the Commonwealth of Massachusetts have refused to comply with federal regulation in the Boston market. There is no evidence as to whether or not the price paid the Massachusetts farmer for his milk has had any effect upon the volume of milk moving in interstate commerce into the Boston market.

99. Whenever classified prices are in effect in a market, it is possible for an individual dealer to obtain a competitive advantage by buying milk at a flat price. If Order No. 4 as amended is to be effective in the Boston market, it will be

necessary for all dealers to adhere to the class price system provided therein of purchasing their milk in order to prevent some dealers from having the opportunity to obtain a competitive advantage by purchasing their milk on a flat price basis. The mere fact that a dealer buys on the flat price plan does not necessarily give him a competitive advantage. However, the practice of flat price buyers is to buy very close to their fluid milk requirements and it is obvious that if such a buyer buys on a flat price which is less than what the price for his milk would be on a use basis, he will own his milk cheaper than his competitors who are paying for milk on a use basis and will therefore obtain a competitive advantage. In the period between 1933 and 1936 certain flat price buyers in the market who did not comply with the federal licenses and orders, bought close to their fluid milk requirements, paid slightly more than the blended price payable under the licenses and orders, and still obtained their milk at a cost which was materially lower than the cost of Class I milk prescribed in the licenses and orders.

100. Under normal conditions in the Boston milk market, the tendency of handlers under the operation of Order No. 4, as amended, is to pay to producers no more than the blended price computed by the Market Administrator because of competitive economic conditions. Under normal conditions, the minimum resale prices fixed by the Massachusetts Milk Control Board in its official orders with respect to sales by handlers in the Boston Marketing Area tend to be the maximum prices which such handlers can obtain for market milk.

101. Attached hereto as Exhibit 8 is a certified copy of the minutes of a meeting of the Massachusetts State Milk Control Board held June 23, 1937, which contain Official Order No. 832 and Official Order No. 833.

## PART FOUR

## ADMINISTRATION OF THE ORDER

*I. The Market Administrator and His Office*

102. Samuel W. Tator was designated Market Administrator under Order No. 4 as amended on August 1, 1937. From February 9, 1936, until February 10, 1937, Mr. Tator had been Market Administrator under Order No. 4. Prior to that time Mr. Tator was Administrator under License 38, regulating the handling of milk in the Boston market, which had been issued under the provisions of the original Agricultural Adjustment Act. Mr. Tator was appointed to this position about November 1, 1934, and continued to hold it until he resigned on or about February 10, 1937. Prior to his coming to Boston, Mr. Tator had acted as Administrator of a license in effect in the market in Providence, Rhode Island, a position which he held from approximately July 1, 1934, until he was appointed Administrator under the Boston license.

103. The Market Administrator maintains an office in Boston at 80 Federal Street. He also maintains a staff of employees. The number of the employees grew from sixteen on August 31, 1937, to thirty-nine on December 31, 1937. The Market Administrator employed fifteen auditors as of December 31, 1937. He began with two auditors in the month of August; acquired two more in the month of September; two or three more in the month of October; the others were hired in the months of November and December.

104. Mr. Tator, who is an accountant, trains the auditors for their work. Each of them is required to study the order, and is given various tests as to his comprehension of it before he is permitted to undertake auditing work. Before the auditor works independently he is sent out with another auditor who has been trained.

105. As part of his duties the Market Administrator prepared a set of books to be used in the operation of the office. These books include a ledger in which all entries are recorded that reflect cash receipts and disbursements, ex-

penses, invoices, producer settlement accounts, marketing service accounts, and administration accounts. There is also a payroll book, an equalization book, an expense or cash disbursement book, and a cash receipts book. There are various other preliminary records which are kept by the Market Administrator. All of the financial transactions of the Market Administrator's office are gathered into the general ledger and that book reflects his cash position. The subsidiary books such as the cash books, equalization journals, and expense journals are posted direct to the general ledger. These various subsidiary books are posted from the original records in the Market Administrator's office.

## *II. Forms Furnished to Handlers*

106. In connection with the administration of the Order, the Market Administrator caused a number of forms to be prepared for the use of handlers who were required to furnish information under the terms of the Order. Among the forms devised or adopted by the Market Administrator were the following: Form No. 8 which is the form on which a handler reported producers who started deliveries to the handler; Form No. 9 which is the form used by a handler to report producers who stopped delivering milk to him; Form No. 15 which is the form to be used in making reports by handlers who receive milk from producers; Form No. 16 which is the form to be used in making reports by producer-distributors, i.e., handlers who were also producers and received no milk from producers; Form No. 17 which is the form to be used in making reports by handlers buyers, i.e., handlers who purchased only from other handlers; and Form No. 25 which is the form to be used in reporting changes in names of farm operators.

107. The Market Administrator sent Form 15 together with a letter of instructions for filling it out to a list of handlers operating in the greater Boston marketing area. Early in August 1937 the Market Administrator prepared a list of handlers to whom Form 15 was to be sent on the basis of a

list which had been prepared by Mr. Aplin during the period prior to August 1, 1937, when he was Acting Market Administrator. Mr. Aplin had received reports from handlers operating in the marketing area for the first delivery period in July 1937, and had supplemented the list of handlers in his office from those reports. The Market Administrator supplemented the information available in his office by making inquiries of the State Milk Control Board as to the persons holding licenses for the sale of milk in the marketing area under the provisions of Chapter 376 of the Act of 1934 of the Commonwealth of Massachusetts as amended (Milk Control Act) and also checked various other sources for any available information. The Market Administrator testified that the list of persons to whom Form 15 was to be sent was the best list that his office was able to make and that he had not had any difficulty in using it. In an attempt to keep the list current it has been necessary to eliminate handlers who have become inactive and to add names of new handlers from time to time. The Market Administrator made no attempt to ascertain the names of any handlers or producers delivering to such handlers, outside the states of Maine, New Hampshire, Vermont, Massachusetts, Connecticut, and New York who were engaged in shipping cream to the marketing area but who were not licensed to distribute and sell fluid milk in the marketing area and who in fact shipped no fluid milk to the marketing area.

108. Form 15 has been sent to the handlers on the above described list in each delivery period since August 1, 1937. Form 15 follows:



## MARKET ADMINISTRATOR FOR THE GREATER BOSTON MARKETING AREA

Form 11 Rev. (1-4) Page 1

Report of

## RECEIPTS AND SALES OF MILK

Delivery Period

## MILK RECEIPTS

(In Pounds)

	From Regular Producers	From Non-Producers per Schedule B	No. of Producers	Total Milk Received
<b>FROM MEMBERS OF QUALIFIED ASSOCIATIONS</b>				
REC'D AT CITY PLANT—From farms within 50-mile zone				
—From farms 51-75-mile zone				
—From farms outside 75-mile zone				
<b>RECEIVED AT COUNTRY PLANTS—Schedule A</b>				
<b>FROM NON-MEMBERS</b>				
REC'D AT CITY PLANT—From farms within 50-mile zone				
—From farms 51-75-mile zone				
—From farms outside 75-mile zone				
<b>RECEIVED AT COUNTRY PLANTS—Schedule A</b>				
<b>SUB-TOTAL</b>				
<b>RECEIVED FROM OWN FARM PRODUCTION</b>				
<b>TOTAL RECEIPTS FROM PRODUCERS AND OWN FARM</b>				
<b>FROM OTHER HANDLERS, or Class I Price—Schedule C</b>				
<b>FROM OTHER HANDLERS, or Class II Price—Schedule C</b>				
<b>TOTAL MILK RECEIPTS</b>				

MILK SOLD, DISTRIBUTED, OR USED  
(In Pounds)

<b>CLASS I:</b>	
In Marketing Area—Schedule E	
Outside Marketing Area—Schedule E	
<b>TOTAL CLASS I SALES</b>	
<b>CLASS II Sold, Distributed, or Used</b>	

TOTAL MILK SOLD, DISTRIBUTED, OR USED (Must equal Total Milk Receipts)

I, the undersigned, hereby state that the information given in the foregoing report is true and complete to the best of my knowledge, information and belief.  
In Witness Whereof I have hereunto set my name under the penalties of perjury this \_\_\_\_\_ day of \_\_\_\_\_, 1938.

(Handler's Signature)

By \_\_\_\_\_  
(Individual authorized to sign on behalf of the handler)

(Title)



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RECEIPTS OF MILK FROM NEW PRODUCERS

"Shipped Delivery Notice" for each new producer must be obtained, if not previously mailed.

**TOTALS** (p. 222)

SCHREIBER C

SCHEDULE C  
RECEIPTS OF MILK, INCLUDING SKIM MILK, FROM OTHER FARMERS

**TOTALS (to page 11)**

## SCORING

SALES, OF MILK, INCLUDING SEIN MILK, TO OTHER HANDLERS, WHICH ARE INCLUDED IN CLASS II SALES.

**TOTAL**

*\* Substantial proof of use by purchasing handler other than as Class I will must be furnished to the Administrator within 15 days after the end of the period covered by this report.*

## Master's Report

109. The following letter of instructions accompanied by a Form 15 was mailed on August 13, 1937, to each handler on the Market Administrator's list:

Tel. Liberty 8636

**MARKET ADMINISTRATOR**  
under the  
**Federal Milk Order**  
issued by the Secretary of Agriculture for the  
**GREATER BOSTON MARKETING AREA**  
Room 746, 80 Federal Street  
Boston, Massachusetts

August 13, 1937

To Handlers in the Greater Boston Marketing Area  
who receive milk from Producers:

Section 1 of Article V of the Compilation of Order No. 4 Regulating the Handling of Milk in the Greater Boston, Massachusetts, Marketing Area, with the Incorporation of Amendment No. 1 of August 1937, a copy of which was mailed you on August 5th, requires that "on or before the eighth day after the end of each delivery period, each handler shall . . . report . . . in the detail and form prescribed by the Market Administrator" receipts and sales of milk.

Enclosed is a four-page form (Form 15 Rev.) on which it is requested that you report your receipts and sales of milk for the period August 1-15, 1937.

*Milk Receipts*

The first four lines of the form call for a report of milk received from the members of qualified associations, divided as between regular producers and new producers. The definition of a new producer is given in a separate letter, which will be mailed to you in a few days.

The first line should show milk delivered to a plant located not more than 40 miles from the State House

in Boston by producers whose farms are located *within* 40 miles of the State House in Boston. The second line should show milk delivered to a plant located not more than 40 miles from the State House in Boston by producers whose farms are located more than 40 miles, but not more than 80-miles, from the State House in Boston. The third line should show milk delivered to a plant located not more than 40 miles from the State House in Boston by producers whose farms are located more than 80 miles from the State House in Boston. The fourth line should show milk delivered by producers to plants located more than 40 miles from the State House in Boston, as detailed in Schedule A on page 2. The total of the first two columns of Schedule A should be carried to the fourth line on page 1.

Milk received from new producers should be shown in the column provided, using the same location breakdown as explained above for regular producers. The detail by individual producers should be shown in Schedule B and should agree in total with the figures on page 1 of the report as to receipts from new producers.

The next four lines on page 1 of the report call for a report of milk received from producers who are *not* members of a qualified association. The division of receipts as between city and country plants and from new producers is just the same as described above.

On the next line, marked Sub-total, show the addition of all figures appearing above that line.

The next line takes care of milk received from own farm production, if any. Please note that this does not necessarily call for all the milk produced on your own farm but only for that part which is received into your plant for ultimate sale or use in the market.

The next two lines call for receipts of milk, including skim milk, from other handlers, at Class I prices and at Class II prices. The name of handlers from

whom such milk is received must be shown under Schedule C on page 3.

*Milk Sold, Distributed, or Used*

Sales of Class I milk are to be divided between sales in the marketing area (as defined in the Order) and sales outside the marketing area. Under Schedule E on page 4, please give the detailed information called for. The names and addresses of other handlers to whom Class I milk has been sold must be shown. Under the section headed "Retail and Wholesale" show on the first line the total Class I milk sold (other than to handlers) in the Boston market. On succeeding lines show sales in each separate market outside the Boston area. The totals of the two columns must be carried to page 1.

The last item on page 1—"Class II Sold, Distributed, or Used"—must be clearly supported by your plant records, as Article III of the Order provides that all milk not specifically accounted for as Class II milk shall be Class I milk. Sales of milk (including skim milk) to other handlers which are included in Class II sales must be itemized under Schedule D on page 3. Satisfactory proof that such milk was utilized by the purchasing handler as Class II milk must be furnished by you within 15 days after the end of the period covered by this report.

Handlers who operate more than one country plant should attach a schedule showing shipments of milk from each country plant.

In signing Form 15 Rev., please note that the individual signing, if other than the handler himself, must have authority from the handler to sign in his behalf. Further copies of the form will be sent to you from time to time on which you are requested to report receipts and sales of milk for August 16-31, 1937, and succeeding periods.

If there is any point in connection with the preparation of this form which is not perfectly clear, we shall be glad to give you any further information requested.

Very truly yours,

SAMUEL W. TATOR

Market Administrator

enc. Form 15 Rev.

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110. At different times between August 5 and August 17, 1937, the Market Administrator sent four other letters of instructions to the handlers described in Finding 107 *supra* for the purpose of assisting them in properly making reports. In general, these letters included instructions as to reporting sales to other handlers, sales to non-handlers, proof of Class II use, and milk received from new producers. The letters are attached to this report as Exhibits 9, 9a, 9b and 9c.

111. During the months of August and September the Market Administrator delegated two men to call on handlers to ask them to report and to assist them in reporting. One of these men continued this work after September and in addition the Market Administrator engaged another man to carry on the same work. On November 15, 1937, the Market Administrator wrote the following letter to each handler who had not submitted a report to him:

MARKET ADMINISTRATOR  
under the  
Federal Milk Order  
issued by the Secretary of Agriculture for the  
GREATER BOSTON MARKETING AREA  
Room 746, 80 Federal Street  
Boston, Massachusetts.

November 15, 1937

Dear Sir:

We are sending you this reminder to give you one more opportunity to come into compliance with Federal regulation.

The first requisite towards full compliance is that all handlers who buy milk from producers and who sell in the Greater Boston Marketing Area must file a record of receipts and sales of milk for each semi-monthly period on our Form 15, such as the one enclosed for the November 1-15, 1937 period. Although we have information that you come within the above classification, our records indicate that you have failed to file any such reports with us.

If you have mislaid the Forms 15 which we sent you for the periods from August 1 through October 31, 1937, we shall be glad to send you additional copies on request. If there is anything about filling out the form which is not clear to you, we should be glad to send someone to help you prepare your first reports.

Very truly yours,

SAMUEL W. TATOR

Market Administrator

enc. Form 15

P-7(8)

112. On November 13, 1937, the Market Administrator sent two letters to handlers who were shown on his list as buying milk from other handlers but who had not made reports to him for all delivery periods up to that time. One of these letters was sent to handlers who had made some prior reports but whose reports were not complete. The letter follows:

MARKET ADMINISTRATOR

under the

Federal Milk Order

issued by the Secretary of Agriculture for the

GREATER BOSTON MARKETING AREA

Room 746, 80 Federal Street

Boston, Massachusetts

November 13, 1937

Dear Sir:

On checking over our records, we find that we do not have your report on our Form 17 for the period.

Perhaps this was an oversight on your part, and we are enclosing additional forms for your convenience. Please fill these out and return them to this office at once, so that you will be in full compliance with Order No. 4.

Very truly yours,

SAMUEL W. TATOR

Market Administrator

Encls.

HB-5(S)

The other letter was sent to dealers who had made no reports up to that time. The letter follows:

Tel. Liberty 8636

MARKET ADMINISTRATOR

under the

Federal Milk Order

issued by the Secretary of Agriculture for the

GREATER BOSTON MARKETING AREA

Room 746, 80 Federal Street

Boston, Massachusetts

November 13, 1937

Dear Sir:

At the close of each half month we have sent you a Form 17, such as the one enclosed for the November 1-15 period. Handler-Buyers are required under Order No. 4 to make reports of their purchases of milk from other handlers, but according to our records, you have failed to file any such reports with us.

It is of great importance that you file these reports regularly and we are sending you this reminder to give you another opportunity to comply with Federal regulations. You are not required to pay any assessment to this office if you buy your entire supply from another handler.

If you have lost the forms which we sent you for the periods from August 1 through October 31, we will

be glad to send you additional forms for these periods at your request.

Very truly yours,

SAMUEL W. TATOR

Market Administrator

enc. Form 17

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113. Between August 1, 1937, and December 31, 1937, the Market Administrator reported to the Secretary of Agriculture the names of those persons whom he considered as not complying with the order.

### *III. Determination as to the Administration Charge*

114. Shortly before August 27, 1937, the Market Administrator determined that an amount of two cents per hundredweight should be paid for administration expense under the provisions of Section 1, Article X of the Order. The charge of two cents per hundredweight for administration expense is a charge applied to the total amount of milk which each handler receives from producers and which he produces himself. The determination made by the Market Administrator with respect to the amount to be paid under Section 1 of Article X of the Order was announced in a letter which the Market Administrator sent to handlers in the marketing area on August 27, 1937. The letter read in part as follows:

He (the Market Administrator) has also determined that the sum to be paid him by handlers for expense of administration shall be 2 cents per hundredweight of milk, until further notice.

In the announcement of blended prices published by the Market Administrator for each delivery period after August 1, 1937, a similar statement was contained.

115. The Market Administrator testified that the determination which was made shortly before August 27, 1937,

was to apply until changed by a subsequent determination. Subsequent to this determination no different determination was made with respect to the amount which should be paid for administration expense. The Market Administrator applied the determination that two cents should be paid for administration expense under the provisions of Section 1 of Article X of the Order to each delivery period between August 1, 1937, and January 15, 1938.

#### *IV. Determination as to the Marketing Service Charge*

116. In accordance with the provisions of Section 1 of Article IX of the Order, the Market Administrator determined that two cents per hundredweight should be deducted from payments made to producers not members of associations designated as cooperatives by the Secretary of Agriculture for the various marketing services set forth in Section 1 of Article IX. The determination was made by the Market Administrator in the latter part of August 1937 but prior to the time that the blended price was announced for the first period in August. This determination was announced in a letter which the Market Administrator sent on August 27, 1937, to handlers of milk in the marketing area. The letter read in part as follows:

The Market Administrator has determined that the amount to be deducted for marketing services from the payments to producers who are not served by a qualified cooperative association, shall be 2 cents per hundredweight of milk, until further notice.

The amount to be deducted for marketing services under the provisions of Section 1 of Article IX of the Order has been published in each blended price announcement since August 1, 1937.

117. Between August 1, 1937, and December 31, 1937, the total charges assessed against the defendants in these suits for marketing services under the provisions of Section 1 of

Article IX of the order amounted to approximately \$30,000. It is now impossible for the Administrator to verify weights, sample, or test milk which was delivered between August 1, 1937, and December 31, 1937. It would be possible for the Administrator to furnish producers entitled to information under the provisions of said Article IX some valuable market information of an historical nature.

118. The Market Administrator keeps in his office a list of associations which he has been advised by the Secretary of Agriculture are designated as cooperatives under the Capper Volstead Act. Among the associations included on that list are: Bellows Falls, Kenduskeag Valley; Caledonia County Cooperative; Cabot Farmers' Cooperative Creamery, Inc.; Manchester Dairies; Milton Cooperative; New England Dairies, Inc.; New England Milk Producers Association; and United Farmers.

#### *V. Computation of the Class II Price*

119. In each of the delivery periods between August 1, 1937, and December 31, 1937, the Market Administrator computed the Class II price in accordance with the instructions found in Section 3 of Article IV of Order No. 4 as amended.

120. The application of this method to a particular delivery period is shown by the following figures used in the computation of the Class II price for the delivery period August 1 to 15: The weighted average price for a forty-quart can of bottling-quality cream in the Boston market was \$15.437; this figure divided by 35 equals \$.4678, which multiplied by 3.7 equals \$1.7309. The average of the weekly quotations per pound of domestic 20-30 mesh casein was \$.135; this figure multiplied by 2.125 equals \$.2869, which added to \$1.7309 equals \$2.0178. The subtraction of \$.42 leaves \$1.598 which is the price for milk delivered to plants within forty miles of Boston. The deduction of \$.06 leaves \$1.538, the price for milk delivered to plants located outside the forty-mile zone.

121. The Class II price which was computed by this method for each delivery period between August 1, 1937, and December 31, 1937, is shown in the public announcement of the blended price for that delivery period which is set forth in Finding 139 *infra*.

122. The Market Administrator publicly announced the Class II price thus computed for each of the delivery periods between August 1, 1937, and December 31, 1937, and the defendants raised no question as to this publication having been made in each case on or before the fifth day after the end of the delivery period for which the Class II price was computed.

#### *VI. Computation of the Butterfat Differential*

123. In each of the delivery periods between August 1, 1937, and December 31, 1937, the Market Administrator computed a butterfat differential in accordance with the instructions found in Section 3 of Article VIII of Order No. 4 as amended. The butterfat differential thus computed for each delivery period between August 1, 1937, and December 31, 1937, is shown in the public announcement of the blended price for that delivery period which is set forth in Finding 139 *infra*.

#### *VII. The Computation of the Blended Price*

124. The Market Administrator computed a blended price for each of the delivery periods between August 1, 1937, and December 31, 1937. A simplified description of a blended price in a marketwide pool such as the order establishes appears in Paragraph 76. The actual manner of computation of the blended price in each delivery period is described in Findings 125 to 139 *infra*.

##### **A. The Determination of the Net Class I Milk of Each Handler**

125. The Market Administrator first determined the net Class I milk of each handler whose milk was to be included

in the computation of the blended price. This determination was made in the following manner: The Market Administrator eliminated from the amount of "Total Class I sales" as shown on each handler's Form 15 report the amount of milk sold or used as Class I which was purchased from other handlers, shown as the item "From other handlers at Class I prices." Next he eliminated from the remaining Class I 90% of the milk which the handler reported as "Received from own farm production" (the other 10% of this milk was eliminated from the Class II milk). The resulting figure was the net amount of milk used or disposed of for Class I purposes which the handler had received from producers.

#### B. Computation of the Value of the Net Class I Milk

126. The first step in the computation of value of milk for each handler as provided for in Article VII, Section 1 of the order was to multiply the amount of the net Class I milk by the applicable Class I price, *i.e.*, \$3.19 per hundred-weight for all milk received at a city plant and the price of \$3.01 per hundredweight for milk received at plants located more than 40 miles from the State House in Boston (see Order, Art. IV, Sec. 2). The next step was to compute certain freight allowances and outside market differentials as explained in Findings 127 and 128 below.

127. *Computation of the freight allowance.* If the handler shipped milk into the market from a plant beyond the 40-mile zone and the milk was used for Class I purposes, a freight allowance was computed for that milk. The freight allowance was computed by multiplying the amount of milk shipped into the Boston market by the freight rate as provided for in Article IV, Section 2, Paragraph 2 of the order. For the purpose of computing the freight allowance on Class I milk shipped from country stations, it was assumed that the milk received directly from producers at the handler's city plant was Class I milk. Consequently, the total amount of such milk was deducted from the net Class I

milk of the handler and the freight allowance allowed only on the balance. If the handler shipped to Boston from more than one country station, the Market Administrator assumed that the Class I shipments were from the stations nearest to Boston. Thus, in the case of such a handler he first computed a freight allowance on the amount of milk shipped from the station located nearest to Boston. He then computed a freight allowance on the amount of milk shipped from the next closest station to Boston and so on until he had computed a freight allowance on the net amount of the handler's Class I milk less the amount of milk which the handler had received directly from producers at the city plant. The total amount of the freight allowance was deducted from the amount computed as described in Finding 126 *supra*.

128. *Computation of outside market differentials.* The Market Administrator next calculated the outside market differentials. The Market Administrator ascertained the current Class I prices paid to producers for milk which was marketed in areas other than the Boston marketing area in all cases where a report submitted to him indicated that milk was being sold in such other areas. The actual computation of the differential is accomplished by (a) calculating the difference between such prices and the Class I prices fixed in Order No. 4 on a hundredweight basis, and (b) adjusting the amount of that difference by the difference between the freight rate to Boston and the freight rate to the outside marketing area. The amount of the differential thus computed on a hundredweight basis was multiplied by the total amount of milk sold by the handler as Class I milk in each outside area to obtain the total amount of the differential. If the outside market price, as determined by the Market Administrator, in the outside market, after making the adjustment for the difference in the freight rate, was below the Class I price fixed in the order, the total amount of the differential so computed was subtracted from the amount remaining after deducting the amount for the freight allowance as explained in Finding 127 *supra*. If

the outside market price as determined by the Market Administrator, after making the adjustment for the differences in the freight rate, was higher than the Class I price fixed in the order, the Market Administrator added the amount of the differential to the amount remaining after deducting freight allowance as explained in Finding 127 *supra*.

129. The amount thus obtained by adding or subtracting the amount of the differentials as the case might be was the amount charged to the handler as the value of his net Class I milk.

#### C. Calculation of Net Class II Milk and Value Thereof

130. To determine the amount of the net Class II milk the Market Administrator took the amount indicated on the Form 15 report of each handler as "Class II sold, distributed or used" and eliminated (a) any milk reported as received "From other handlers at Class II prices" and (b) the remaining 10% of the total amount of milk reported as "Received from own farm production." The result was the net amount of Class II milk. The net amount of Class II milk was multiplied by the applicable Class II prices determined in accordance with Article IV, Section 3 of the order. The amount thus obtained was the amount charged to the handler as the value of his net Class II milk.

#### D. Calculation of the Value of the Net Class I and Net Class II Milk for All Handlers

131. The next step was to add to the amount charged to the handler as net value of his Class II milk the amount charged to the handler as net value of his Class I milk. The total amount charged to all handlers as the net value of Class I and Class II milk included in the price calculation was then obtained by adding together the totals computed for each handler whose report was used.

#### E. Calculation of Differentials

132. The next step was to calculate the net amount of certain differentials provided for in Article VIII of the

Order. The method for determining the net amount of the differentials was as follows: From the Form 15 reports submitted by all handlers who were included in the price calculation the amount of milk received at country stations in each freight zone from producers not new producers was totaled (The "freight zones" referred to are those established by the Interstate Commerce Commission and roughly approximate concentric bands ten miles in width, with Boston as the center. These are to be distinguished from the "location zones" established in the order—See Article IV, Section 1 and Article VIII, Section 4 of the Order.) The total amount of milk so determined in each freight zone beyond 40 miles was multiplied by the applicable freight rate to Boston from that zone. By adding together the totals for each zone, the total amount of freight differentials for all milk received from producers at plants outside the 40-mile zone was determined. From this amount was deducted the sum of the three differentials referred to in Paragraphs 2, 3, and 4, Section 4 of Article VIII of the Order. The three differentials so subtracted from the total amount of freight differentials are: (1) 18 cents per hundredweight of milk delivered by producers directly to a city plant, (2) 46 cents per hundredweight of milk delivered by producers whose farms are located within the 40-mile location zone, and (3) 23 cents per hundredweight for milk delivered by producers whose farms are located within the 41-80 mile location zone. In order to compute the total amount of these differentials it was necessary to obtain from each handler's Form 15 report and to total for all handlers who were included in the price calculation: (1) The total amount of milk received at city plants from producers who are not new producers; (2) the total amount of milk received from producers who were not new producers and whose farms are located within the 40-mile location zone; and (3) the total amount of milk received from producers who were not new producers and whose farms are located in the 41-80 mile location zone. These totals were then multiplied by the applicable differentials.

and the amounts thus obtained were added together and the total amount of the differentials was deducted from the freight differentials described above.

133. The net amount of the differentials was then added to the total amount charged to all handlers as the value of the net Class I and Class II milk as previously computed in Finding 131 *supra*.

#### F. Computation of Amount Payable to New Producers

134. The next step was to compute the total amount to be paid to new producers for the milk which they delivered. This was done by multiplying the total amount of milk delivered by new producers to city plants of handlers who were included in the price calculation by the applicable Class II price and multiplying the total amount of milk delivered by new producers to country plants of handlers who were included in the price calculation by the Class II price applicable to country plants. These amounts were then added together and the sum was deducted from the total amount charged to all handlers as the value of the Class I and Class II milk, plus differentials, computed in Finding 133 *supra*. The total amount of milk delivered by new producers was also eliminated from the total amount of milk received from producers.

#### G. Reduction of Amount to Per Hundredweight Basis

135. By dividing the total amount of milk received from producers (other than new producers) into the total amount charged to all handlers as the value of Class I and Class II milk, plus differentials, less the amount to be paid to new producers, the Market Administrator obtained a per hundredweight price.

#### H. Cash Balance Retained by Market Administrator

136. From the price so computed he deducted not less than four nor more than five cents per hundredweight for the purpose of retaining the cash balance referred to in

Article VII, Section 2, Paragraph 5 of the Order. In certain periods there was added to the resulting price a number of cents per hundredweight sufficient to distribute any cash balance which the Administrator had accumulated.

#### I. The Basic Blended Price and Zone Prices

137. The foregoing method of computation resulted in a basic blended price from which the zone prices were computed in the following manner: The location zone prices for milk delivered to plants within 40 miles of the State House in Boston were calculated by adding 18 cents to the basic blended price. For all milk delivered at plants beyond the 40-mile location zone the price to be paid producers was the basic blended price less the freight rate to Boston from the particular freight zone in which the country plant was located. On all milk coming from farms located within the 40-mile location zone there was added to the price to producers the differential of 46 cents and on all milk received from producers whose farms are located in the 41-80 mile location zone there was added to the price to be paid such producers the differential of 23 cents per hundredweight.

#### J. Announcement of the Blended Price

138. On or before the twelfth day after the end of each delivery period between August 1, 1937, and August 15, 1938, the Market Administrator made a public announcement of the blended price for each of the aforesaid delivery periods in the form of the documents attached hereto as Exhibit 10.

### *VIII. Operation of the Equalization Provisions*

139. If the total amount payable by a handler to producers delivering milk to him in a particular delivery period is greater than the total amount charged to the handler as the value of the milk which the handler receives from producers in that particular delivery period, com-

puted on the basis of the prices fixed in Order No. 4, as amended, the handler is credited with the difference in his producer settlement account on the books of the Market Administrator. This credit is offset by a charge to the general "Producer Settlement Account" on the books of the Administrator. In such circumstances the handler is entitled to receive an equalization payment from the Market Administrator (Par. 3, Sec. 1 of Art. VIII of Order No. 4, as amended). For example, in the delivery period August 1-15, 1937, the bill rendered to the Milton Cooperative Dairy Corporation showed that the total milk received from producers and the value thereof was \$57,647.08; and that the amounts payable to its producers for 3.7 milk at the established zone prices totalled \$63,792.05. Thus in that particular delivery period this handler was entitled to receive from the Market Administrator the differences, *i. e.*, \$6,117.97. ~~A~~ Handler in this position receives a check from the Market Administrator for the amount of his equalization credit. The checks are sent on the 25th day after the close of the delivery period to which the equalization credit applies and are sent to the dealer on the assumption that he has paid or will pay his producers for the milk received in that delivery period on the basis of the prices announced by the Market Administrator. An audit of the handler's payrolls is subsequently made to determine what payments he has in fact made to producers.

140. If the total amount payable by a handler to producers delivering milk to him in a particular delivery period is less than the total amount charged to the handler as the value of the milk which the handler receives from producers in that particular delivery period computed on the basis of the prices fixed in Order No. 4, as amended, the handler is debited with the amount of the difference in his producer settlement account on the books of the Market Administrator. This debit is offset by a corresponding credit in the general "Producer Settlement Account". In such circumstances the Market Administrator renders a

bill to the handler for the amount of the debit. For example, in the delivery period October 1-15, 1937, the bill rendered to the Whiting Company showed that the total milk received from producers and the value thereof was \$81,010.66, and that the amounts payable to its producers for 3.7 milk at the established zone prices totaled \$64,085.21. Thus, in that particular delivery period this handler was billed by the Market Administrator for the difference, *i. e.*, \$16,925.45. By the terms of Article VIII, Section 1 of the order, this payment is required to be made on or before the twenty-fifth day after the close of the delivery period to which the producer settlement debit applies and is made to the Market Administrator.

141. Except for such differences as may be created by the deductions which the Market Administrator makes for the purpose of creating a cash reserve or by the payments he makes for the purpose of distributing the cash reserve, in any particular delivery period the debit charges for equalization payments due from handlers whose milk is included in the computation of the blended price are offset by credits for equalization payments due to other handlers whose milk was included in the computation of the blended price. With respect to the two delivery periods in August, the equalization debits to handlers are offset on the Market Administrator's books by equalization credits to other handlers. However, in each delivery period from September 1, 1937, to and including December 31, 1937, the debits for equalization payments due from noncomplying handlers (whose milk was not included in the computation of the blended price as is reported in Paragraphs 144 to 148 below) have not been offset by credits to other handlers, whether complying or noncomplying. The aggregate of such charges which are not offset on the books of the Administrator by corresponding credits to other handlers was \$490,094.90 for the period September 1 to December 31, 1937. These debits to the noncomplying handlers are, however, offset by a credit to the general producer settlement account as above explained. The equalization ac-

counts for the two delivery periods in August have not been liquidated.

142. The Market Administrator testified that if he receives the amount of the equalization debits which have been billed to the defendants in each of the delivery periods between September 1, 1937, and December 31, 1937, he will ask the Secretary of Agriculture for advice with respect to the distribution of this money.

#### *IX. The Exclusion and Inclusion of Milk in Connection with the Computation of the Blended Price*

143. The findings as to the exclusion and inclusion of milk in connection with the computation of the blended price will be divided into three general categories: (1) The exclusion and inclusion of dealers, (2) the exclusion and inclusion of particular plants, and (3) the exclusion and inclusion of milk as Class I or Class II.

##### *A. The Exclusion and Inclusion of Dealers*

144. *Availability of reports.* No dealer was included in the computation of the blended price in any delivery period from August 1, 1937, to and including December 31, 1937, unless, at the time the blended price was computed, the dealer's report was in the Market Administrator's hands and was in such condition that it could be used for the purpose of computing the blended price.

145. *Receipt of milk from producers.* No dealer was included in the computation of the blended price for any delivery period from August 1, 1937, to and including December 31, 1937, unless his reports showed that he received some milk from producers.

146. *The making of certain payments referred to in Section 1 of Article VIII of Order No. 4, as amended.* In each delivery period from September 1, 1937, to and including December 31, 1937, the Market Administrator excluded from the computation of the blended price, milk reported by handlers who had not made certain payments

referred to in paragraph 3, Section 1 of Article VIII of Order No. 4, as amended. Thus, the Market Administrator excluded all handlers who at the time of the computation of the blended price had not paid in full any debit balance in the handler's producer settlement account outstanding on the Market Administrator's books after making the entries for the delivery period next preceding but one.

147. If in any delivery period a substantial amount of equalization charges against one or more handlers should not be paid, the Administrator could not make full payment of equalization credits for that period to certain other dealers, to be used by them in paying the blended price to their producers. If in each delivery period subsequent to August 31, 1937, the Market Administrator had computed a blended price, including all of the milk handled by the defendants which was excluded for the reason that they had not made the payments required by paragraph 3 of Section 1 of Article VIII of the order for the period next preceding but one, the blended price so computed would have been higher than the announced blended price for each delivery period after August 31, 1937, to and including December 31, 1937.

148. In certain instances particular handlers were excluded even though they had no unpaid balance for producer settlement account with respect to the particular milk which they had handled in the delivery period next preceding but one. In each of these instances, however, the Market Administrator, at the time of the computation of the blended price, had not received payment in liquidation of a debit balance for producer settlement account outstanding on his books after making the entries for the delivery period next preceding but one. The Market Administrator adopted this construction of Paragraph 1 of Section 2 of Article VII of Order No. 4, as amended, upon the advice of the Acting Chief of the Dairy Section of the Agricultural Adjustment Administration, Dr. Miller.

149. In no delivery period between August 1, 1937, to and including December 31, 1937, was any handler excluded from the computation of the blended price because of his failure to pay the blended price to his own producers for milk which he received in the next preceding delivery period but one.

150. New England Dairies, Inc. was included in the price computation for every delivery period from August 1, 1937, to and including December 31, 1937, although New England Dairies, Inc. has not paid to its individual members and to the members of affiliated cooperatives delivering to its plant the full amount of the blended price announced by the Market Administrator in the two delivery periods in August, 1937. On the contrary, New England Dairies, Inc. made payments to its producers which were less than the blended price so announced and designated such payments as being "on account". New England Dairies, Inc. has not yet been paid the amount of the credits to its producer settlement account for the two delivery periods in August.

151. About September 9, 1937 certain persons representing New England Dairies, Inc. informed the Market Administrator that New England Dairies, Inc. would not be able to pay the blended price for the two periods in August unless it received from the Market Administrator the amounts due it for equalization in those two periods. The Administrator did not at that time or thereafter pay New England Dairies, Inc., or offer any assurance that he would pay, the amounts due it for equalization in those two periods. The Administrator did not at any time thereafter determine or attempt to determine either by informal inquiry, by audit, or otherwise, the prices paid by New England Dairies, Inc. for milk received from producers during August, 1937 until in January, 1938. The books of New England Dairies, Inc. would have disclosed what had been paid. The Market Administrator did not obtain the payrolls of the New England Dairies, Inc. for the purpose of making an audit with respect to their payments in the

two delivery periods in August until some time in January, 1938 and on February 3, 1938 the audit of those payrolls had not as yet been completed. The effect of including the milk of New England Dairies, Inc. in the price computations for delivery periods after September 1, 1937 was, in some periods, to lower the blended price and in other periods to raise it.

152. There was no evidence that any other handler whose milk was included in the computation of the blended price for any of the delivery periods between September 1, 1937, to and including December 31, 1937, had failed to pay the blended price to his producers with respect to the milk received in any delivery period between August 1, 1937 and December 31, 1937.

153. *The Handling of Milk sold as Milk or Cream, in the marketing area.* The Market Administrator excluded from the computation of the blended price in each of the delivery periods between August 1, 1937 and December 31, 1937, any handler whose reports showed that he had not handled milk which was sold as milk or cream in the marketing area as defined in the order.

#### B. The Exclusion and Inclusion of Particular Plants

154. *Plants which shipped no milk or cream to the marketing area during the delivery period.* No milk received at a country plant was included in the computation of the blended price for any delivery period between August 1, 1937 and December 31, 1937, if the Market Administrator knew on or before the date of the computation of the blended price that no milk or cream was shipped from that plant to the marketing area as defined in the order during the particular delivery period.

155. If a plant otherwise eligible to be included in the price computation reported some milk or cream shipped to the marketing area as defined in the order during a particular delivery period, all the milk received at that plant was included in the price computation regardless of the

percentage of its total receipts which were shipped into the marketing area as defined in the order. The table on pages 168-169 indicates the approximate percentage of the total amount of milk received at each of the plants operated by or affiliated with New England Dairies, Inc. which was shipped to the marketing area as defined in the order in May, 1937 and in each delivery period between August 1, 1937 and December 31, 1937.

156. The table on pages 170-171 shows for May and for each delivery period between August 1, 1937 and December 31, 1937, whether or not country plants operated by or affiliated with New England Dairies, Inc. shipped milk, cream or milk and cream into the marketing area as defined in the order in each of the aforesaid delivery periods.

157. The Hiram plant of New England Dairies, Inc. shipped no milk or cream into the marketing area as defined in the order between August 1, 1937 and December 15, 1937. Nevertheless, New England Dairies, Inc. included the milk which it received at the Hiram plant in its Form 15 reports for the two delivery periods in August, 1937. The milk reported as received by New England Dairies, Inc. at its Hiram plant was included in the computation of the blended price for the two delivery periods in August, 1937 but was excluded in each subsequent delivery period to and including December 15, 1937. No change has been made in the blended price for the two delivery periods in August, 1937. An adjustment has been made by the Market Administrator in the accounts of New England Dairies, Inc. to exclude from the accounts of New England Dairies, Inc. the milk reported as received at the Hiram plant in those periods in the manner explained in Finding 185 *infra*.

158. The Swanton plant of Milton Cooperative Dairy Corporation shipped no milk or cream into the marketing

NEW ENGLAND  
Percentage of Butterfat Re-  
Shipped to Custom-  
Greater Bos-  
May and August to

	MAY		AUGUST	
	1-15 %	16-31 %	1-15 %	16-31 %
Bethel, Vt.				
Burlington, Vt.	49.9	30.3	44.2	8.3
Grand Isle, Vt.	44.7	69.8	11.8	10.5
Granite City, Vt.	11.6	16.3	18.5	14.3
Mt. Mansfield, Vt.	70.9	30.3	32.4	31.2
Richmond, Vt.	15.0	16.6	32.4	31.2
St. Albans, Vt.	28.7	40.4	32.4	31.9
Shelburne, Vt.	78.9	83.5	87.0	96.4
Tunbridge, Vt.	2.9	30.3	27.9	8.5
White River, Vt.	52.3	100.	100.	100.
Cummings, N. H.	70.5	73.5	79.6	80.2
Hiram, Me.	34.7	71.6		
Irona, N. Y.				
Strafford, Vt.	7.8	1.6	7.0	4.8
Wells River, Vt.	82.6	82.6	64.9	72.0
Ashburg, Vt.	91.0	83.4		
Bradford, Vt.				
Cambridge, Vt.	11.6	16.3	Leased to others	
Chelsea, Vt.	44.6	52.2	99.1	94.1
Colebrook, N. H.	81.5	66.5	27.2	45.5
Concord, Vt.	96.5	95.7	98.1	99.6
Craftsbury, Vt.			58.2	34.1
Derby, Vt.	52.3	70.1	52.9	53.6
Detroit, Me.	81.5	66.5	27.2	45.5
E. Berkshire, Vt.	71.2	11.3	57.1	11.1
Enosburg Falls, Vt.	26.9	71.9	10.1	12.4
Essex Center, Vt.	58.7	36.4	42.0	26.5
Fairlee, Vt.				
Greensboro, Vt.	84.7	96.8	42.0	26.5
Hough's Crossing, Vt.	28.7	66.5	27.2	45.5
Hoosick, N. Y.	44.6	52.5	73.6	55.9
Irasburg, Vt.	81.5	66.5	27.2	45.5
Island Pond, Vt.	86.6	62.0	36.0	28.1
Lancaster, N. H.				
Lisbon, N. H.	75.0	82.7		
McIndoe, Vt.				
Morrisville, Vt.	85.6	11.3	64.1	76.5
Newbury, Vt.	86.1	11.3	58.2	34.1
No. Haverhill, N. H.				
Oakland, Me.	Opened August, 1937		52.9	53.6
Orleans, Vt.			89.4	100.
Salisbury, Vt.	52.3	70.1	50.9	53.6
Shoreham, Vt.	81.5	66.5	27.2	45.5
Union, Me.	44.6	52.2	99.1	94.1
W. Fairlee, Vt.	44.6	52.2	98.4	100.
	26.9	71.9	10.1	12.4
	85.6	11.3	64.1	76.5
	11.7		36.0	6.3
	86.6	62.0	36.0	28.1
	32.5		87.3	76.4
	44.6	52.2	92.8	92.6

# Master's Report

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## DAIRIES, INC.

ceived at Country Plants  
ers Selling in the  
ton Market

December, 1937

SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
1-15	16-30	1-15	16-31	1-15	16-30	1-15	16-31
%	%	%	%	%	%	%	%
35.1	29.7	31.8	60.6	82.7	82.3	94.5	80.4
22.5	53.7	43.3	43.4	30.7	30.0	35.0	47.3
26.4	43.2	37.6	35.3	83.8	97.4	72.1	40.2
36.1	10.9	55.9	33.1	80.0	78.9	85.2	84.7
3.5	10.9	40.9	33.1	54.8	59.9	58.7	77.9
48.2	53.2	46.8	62.3	65.4	59.9	53.8	57.7
95.7	94.7	96.6	100.	97.7	99.4	100.	94.0
13.7	8.3	5.2	14.8	36.8	31.5	6.2	19.2
100.	74.8	85.2	100.	80.0	78.9	85.2	84.7
77.6	72.1	74.4	69.7	51.6	49.6	58.7	65.0
10.6	2.0	38.9	60.5	32.6	40.1	43.3	76.7
70.7	61.2	63.2	75.3	60.7	71.0	67.8	19.4
47.5	29.3	60.3	76.7	36.4	59.9	74.8	90.0
96.0	97.7	95.7	98.1	96.9	98.9	98.0	96.7
31.0	20.5	56.5	46.2	17.3	23.6	Plant closed	
96.2	96.7	97.6	98.4	99.5	100.	100.	95.8
25.6	14.9	79.4	98.4	91.6	91.8	90.7	100.
72.8	25.2	61.9	67.5	29.6	31.3	53.9	75.9
31.0	20.5	56.5	46.2	50.8	Plant closed		
54.4	55.0	66.9	74.1	64.4	57.2	86.0	89.7
37.5	44.2	48.6	58.8	100.	100.	100.	100.
39.0	41.0	39.4	39.0	39.6	55.0	49.0	50.4
39.0	41.0	39.4	39.0	39.6	55.0	49.0	50.4
31.0	20.5	56.5	46.2	14.0	23.6	14.8	16.4
73.3	74.9	63.8	61.3	78.0	81.7	88.8	75.9
31.0	20.5	56.5	46.2	50.8	23.6	14.8	16.4
48.0	32.7	45.2	61.4	88.0	90.9	86.7	85.9
95.5	97.5	83.6	5.7	Not operating			
Plant Closed							
25.6	14.9	35.6	56.0	3.5	12.0	9.7	57.9
72.8	25.2	61.9	98.4	91.6	91.8	90.7	100.
100.	100.	100.	100.	98.6	100.	100.	100.
72.8	25.2	61.9	67.5	98.6	100.	100.	100.
31.0	20.5	56.5	46.2	17.3	23.6	100.	100.
96.0	74.9	91.3	100.	98.6	100.	100.	100.
100.	100.	100.	100.	98.6	100.	100.	100.
37.5	44.2	48.6	58.8	23.7	17.5	36.7	39.0
52.5	25.2	16.2	39.1	77.0	72.8	75.9	97.6
8.7		1.6	7.4	19.3	1.6	1.7	
48.0	32.7	45.2	61.4	88.0	90.9	86.7	85.9
37.5	44.2	48.6	58.8	1.1	17.5	79.4	91.6
91.1	89.1	97.5	98.5	98.5	98.3	98.0	99.1

## Master's Report

STATIONS RECEIVING WHOLE MILK AND MAKING SHIPMENTS

## TO THE GREATER BOSTON MARKETING AREA — YEAR 1937

(M—Milk — C—Cream — MC—Milk & Cream)

STATION	MAY	AUGUST		SEPTEMBER		OCTOBER		NOVEMBER		DECEMBER	
		1-15	16-31	1-15	16-30	1-15	16-31	1-15	16-30	1-15	16-31
Bethel, Vt.	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC
Burlington, Vt.	C	C	C	C	C	C	C	C	C	MC	MC
Fr. and Isle, Vt.	C	C	C	C	C	C	C	C	C	MC	MC
Granite City, Vt.	M	M	M	M	M	M	M	M	M	M	M
Mt. Mansfield, Vt.	C	C	C	C	C	C	C	C	C	MC	MC
Richmond, Vt.	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC
St. Albans, Vt.	C	C	C	C	C	C	C	C	C	C	C
Shelburne, Vt.	C	MC	C	C	C	C	MC	MC	MC	MC	MC
Tunbridge, Vt.	MC	C	C	C	C	C	MC	MC	MC	MC	MC
White River, Vt.	C	C	C	C	C	C	MC	MC	MC	MC	MC
Cumming, N. H.	C	None	None	M	C	MC	MC	M	M	M	M
Hiram, Me.	None	None	None	None	None	None	None	None	None	MC	MC
Iron, N. Y.	C	C	C	None	C	MC	MC	MC	MC	MC	MC
Stratford, Vt.	C	C	C	C	C	MC	MC	MC	MC	MC	MC
Wells River, Vt.	C	None	None	C	C	MC	MC	MC	MC	MC	MC
Alburg, Vt.	C	Leased to others July 1st								M	M
Bradford, Vt.	MC	MC	MC	MC	MC	MC	MC	MC	MC	M	M
Cambridge, Vt.	C	MC	MC	MC	MC	MC	MC	MC	MC	M	M
Theleas, Vt.	M	M	M	M	M	M	M	M	M	M	M
Colbrook, N. H.	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC	MC
Opened, June 1, 1937										Plant closed	MC

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Concord, Vt.	MO	MC	MC	MC	MC	MC	MC
Craftsbury, Vt.	C	MC	MC	MC	MC	Plant closed	MC
Derby, Vt.	C	MC	MC	MC	MC	MC	MC
Detroit, Me.	MC	MC	MC	MC	MC	MC	MC
E. Berkshire, Vt.	C	MC	MC	MC	MC	M	M
Enosburg Falls, Vt.	C	MC	MC	MC	MC	MC	MC
Essex Ctr., Vt.	MC	MC	MC	MC	MC	MC	MC
Fairlee, Vt.	MC	MC	MC	MC	MC	MC	C
Greensboro, Vt.	C	MC	MC	MC	MC	M	M
Hough's Crossing, Vt.	C	MC	MC	MC	MC	M	M
Hoosick, N. Y.	O	MC	MC	MC	MC	M	M
Irasburg, Vt.	C	MC	MC	MC	MC	M	M
Island Pond, Vt.	C	MC	MC	MC	MC	M	M
Lancaster, N. H.	Opened August 1937	MC	MC	MC	MC	M	M
Lisbon, N. H.	Opened August 1937	M	M	M	M	M	M
McIndoo, Vt.	MC	MC	MC	MC	MC	C	C
Morrisville, Vt.	C	MC	MC	MC	MC	M	M
Newbury, Vt.	MC	MC	MC	MC	MC	M	M
No. Haverhill, N. H.	M	M	M	M	M	M	M
Oakland, Me.	MC	MC	MC	MC	MC	M	M
Orleans, Vt.	O	MC	MC	MC	MC	M	M
Salisbury, Vt.	C	C	C	None	MC	MC	MC
Shoreham, Vt.	C	MC	MC	C	MC	M	None
Union, Me.	C	None	None	None	MC	M	MC
W. Fairlee, Vt.	MC	MC	M	M	M	M	MC

area as defined in the order between August 1, 1937 and December 31, 1937. Nevertheless, Milton Cooperative Dairy Corporation included the milk received at the Swanton plant in its Form 15 reports for both delivery periods in August, 1937. The milk so reported as received at the Swanton plant was included in the computation of the blended price for both delivery periods in August, 1937, but was excluded in each succeeding delivery period to and including December 31, 1937. No change has been made in the blended price announced by the Market Administrator for the two delivery periods in August, 1937, but an adjustment has been made by the Market Administrator in the accounts of Milton Cooperative Dairy Corporation to exclude the milk reported as received at the Swanton plant during the month of August, 1937, as explained in Finding 185 *infra*.

159. In the two delivery periods in August, 1937 the Wells River plant of the New England Dairies, Inc. did not ship any milk or cream to the marketing area as defined in the order; and in the delivery periods September 16-30 and December 16-31, 1937, the Salisbury plant of New England Dairies, Inc. shipped no milk or cream to the marketing area as defined in the order. Nevertheless, New England Dairies, Inc. included the milk received at the Wells River plant in its Form 15 reports for both delivery periods in August and included the milk received at the Salisbury plant in its Form 15 reports for the delivery periods September 16-30 and December 16-31, 1937.

160. All the milk reported to the Market Administrator as received at the Wells River and Salisbury plants of New England Dairies, Inc. was included in the computation of the blended price for each delivery period between August 1, 1937 and December 31, 1937. No subsequent adjustment has been made in the blended price announced by the Market Administrator or in the accounts of New England Dairies, Inc. for the reason that in any delivery period no milk or cream was shipped to the marketing area from the plants at Wells River and Salisbury.

161. The Market Administrator testified that at the time he computed the blended price for the two delivery periods in August, 1937, and the delivery periods September 16-30 and December 16-31, he had no knowledge that no shipments of milk or cream had come to the marketing area as defined in the order from the Wells River and Salisbury plants of New England Dairies, Inc. The Market Administrator further testified that if he subsequently discovers, on auditing the books of New England Dairies, Inc. that no milk or cream was shipped to the marketing area as defined in the order from a particular plant in a particular delivery period he will make the necessary adjustments to exclude the milk received at that plant in the particular delivery periods from the accounts of New England Dairies, Inc.

162. For the delivery periods in which either the Wells River or Salisbury plants of New England Dairies, Inc. may have shipped no milk or cream to the marketing area as defined in the order, the Form 15 reports submitted by New England Dairies, Inc. did not disclose that no milk or cream came to the marketing area as defined in the order from the said plants. In fact, the report submitted by New England Dairies, Inc. for the delivery period August 1-15, 1937 showed on its face that the Wells River plant shipped milk to Boston. On or about September 27, 1937, the Market Administrator advised the managers of New England Dairies, Inc. and Milton Cooperative Dairy Corporation that he would exclude milk received at any plant from the computation of the blended price which did not ship either milk or cream to the marketing area as defined in the order during the delivery period to which the price computation applied. No written instructions as to what plants were to be reported to the Market Administrator were issued by the Market Administrator except such as were contained in the forms for reports, the order, and the letter described in paragraphs 108 and 109 of this report.

163. *Plant approved by local health authorities.* No milk received at a country plant was included in the computation of the blended price if the Market Administrator had knowledge that the country plant at which the milk was received was not approved for the shipment of fluid milk by some one of the cities or towns in the marketing area as defined in the order.

164. About the middle of August, 1937 the Market Administrator, with the assistance of Mr. Aplin, began preparing a list of plants approved for the shipment of fluid milk by one or more of the cities and towns in the marketing area as defined in the order and has attempted to keep this list current. In this connection, the Market Administrator has carried on a great deal of correspondence with local health authorities.

165. The Market Administrator determined that from August 1 to December 16, 1937 the Cummings and Irona plants of New England Dairies, Inc. did not have the approval of any of the cities and towns in the marketing area as defined in the order for the shipment of fluid milk. The Market Administrator determined that from August 1 to December 31, 1937 the Hoosick plant of New England Dairies, Inc. did not have the approval of any of the cities and towns in the marketing area as defined in the order for the shipment of fluid milk.

166. The milk received at the Cummings and Irona plants of New England Dairies, Inc. was included in the computation of the blended price for each delivery period in August, 1937, but was excluded for all succeeding delivery periods to and including December 15, 1937. The milk received at the Hoosick plant of New England Dairies, Inc. was included in the computation of the blended price for each delivery period between August 1, 1937 and November 16, 1937, but was excluded for all succeeding delivery periods to and including December 31, 1937. The reason that such milk was excluded in the aforesaid periods was that the Market Administrator determined that the plants

were not approved by any city or town in the marketing area as defined in the order for the shipment of fluid milk.

167. The Market Administrator did not conclude until some time in September that the Irona and Cummings plants did not have the necessary approval and he did not conclude until some time in December that the Hoosick plant did not have the necessary approval. When the Market Administrator reached this conclusion he did not change the blended price which had been announced for the periods that the aforesaid plants had been included in the computation of the blended price, but he did adjust the accounts of New England Dairies, Inc. to exclude the milk received at those plants in each of the aforesaid delivery periods in the manner described in Finding 185 *infra*.

168. The municipal ordinances and regulations relating to the production, distribution and sale of milk which were introduced in evidence are attached to this report as Exhibits 11 to 11e inclusive.

169. Attached to this report as Exhibits 12 to 12e inclusive are certificates and licenses which were introduced as evidence that certain handlers whose reports were used in the computation of the blended price in each delivery period between August 1, 1937 and December 31, 1937, possessed licenses to sell and deliver milk from each plant reported by those handlers to the Market Administrator, as required by law. In addition it was stipulated by the parties that at all times between August 1, 1937, and December 31, 1937, the following handlers were licensed by the city or town indicated below to distribute and sell fluid milk in the particular city or town.

City of Melrose : Marland Dairy, Inc.  
: Forbes Milk Company

Town of Arlington : James A. Bustead Dairy

City of Peabody : Anthony J. Conde Dairy

City of Chelsea	:	Eastland Farms, Inc.
	:	Fairfield Farms
City of Lynn	:	Putnam Brothers
	:	Clinton W. Spear
	:	West Lynn Creamery
Town of Wakefield	:	Francis I. Bradford Dairy
	:	
Town of Reading	:	Edson A. Porter Dairy
	:	
City of Newton	:	Prospect Valley Farm
	:	John A. Sellars
	:	
Town of Winches- ter	:	W. T. Boyd & Son

170. In computing the blended price in each of the delivery periods between August 1 and December 31, 1937, the Market Administrator did not exclude any milk reported by a handler, which was otherwise eligible for inclusion, on the ground that the handler had received the milk from a producer who did not have a current certificate of registration issued pursuant to the provisions of Chapter 94 of the General Laws of the Commonwealth of Massachusetts. At no time has the Market Administrator inspected any farms for the purpose of determining the manner in which milk was produced. The parties have stipulated certain facts with respect to the issuance of these certificates and the production and sale of milk by producers not possessing such certificates. If relevant and material in this connection, I find the facts stated in the following four paragraphs.

171. For some time prior to January 1, 1937, and continuing to a time after December 31, 1937, there were records at the State House in Boston, Massachusetts which purported to disclose the name and town in which the farm was located for each producer to whom a certificate under sections 16A-1 of chapter 94 of the General Laws of the Commonwealth of Massachusetts had been issued and the

date of expiration thereof, but it was a practical matter impossible for the Market Administrator to determine from such records and information as were available to him whether or not the various producers, whose milk was reported to him by the various handlers who submitted Form 15 reports for the delivery periods August 1, 1937 to December 31, 1937, did in fact hold the certificates of registration provided for in sections 16A-1 of chapter 94 of the General Laws of the Commonwealth of Massachusetts.

172. For some time prior to January 1, 1937, and continuing to a time after December 31, 1937, a substantial quantity of milk was delivered to handlers in the Boston market by producers who did not possess a certificate of registration as provided in sections 16A-1 of chapter 94 of the General Laws of the Commonwealth of Massachusetts, and some of the milk delivered was distributed and sold by the handlers in the Boston area.

173. Some of the milk reported to the Market Administrator by the aforesaid handlers was in fact delivered by producers who did not possess a certificate of registration as provided in section 16A-1 of chapter 94 of the General Laws of the Commonwealth of Massachusetts, and some of the milk so reported which was delivered by producers who did not hold the said certificates of registration, was in fact included in the computation of the blended price in each delivery period between August 1, 1937 and December 31, 1937. If the Market Administrator had excluded from the computation of the blended price in the various delivery periods between August 1, 1937 and December 31, 1937 the milk which had been received by handlers from producers who did not possess the certificates of registration provided for in chapter 94 of the General Laws of the Commonwealth of Massachusetts, the effect of the exclusion of a part of that milk would have been to raise the blended price for the particular delivery period in which it had been included and the effect of the exclusion of another part of that milk would have been to lower the blended price for the particular delivery period in which the said milk had been included.

174. The Milk Regulation Board of the Commonwealth of Massachusetts has never exercised the powers vested in it by Section 16H of Chapter 94 of the General Laws of the Commonwealth of Massachusetts, to designate additional areas as qualified areas.

#### C. Western Cream Excluded

175. In each delivery period between August 1 and December 31, 1937, substantial amounts of cream were shipped into Boston from plants in middle western and southern states. The whole milk from which this cream was produced was not included by the Market Administrator in the computation of the blended price for any delivery period between August 1 and December 31, 1937. The Market Administrator did not send forms nor did he make any effort to obtain reports from the persons operating the aforesaid plants in the middle western and southern states, although he knew of this condition and knew that it had existed for a number of years. Detailed evidence was introduced as to only one such plant, which was located in Indiana. It appeared that each month in 1937 this plant shipped cream to Boston. The percentage of its milk receipts which were shipped to Boston in the form of cream varied from 35% in June to 97% in December.

176. None of the farmers whose milk comes to Boston in the form of cream from the middle western and southern states have certificates of registration issued pursuant to Massachusetts General Laws, Chapter 94, Section 16C. The persons owning the plants in the middle western and southern states were not licensed by any city or town in the marketing area to sell fluid milk. The plant as to which detailed evidence was introduced possessed only a license for emergency shipments of sweet cream. The Market Administrator did not inspect or cause any inspection to be made of conditions under which milk was produced or of the plants in these middle western or southern states from which cream came nor did he make any such inspection of any dairies or plants in New England.

177. Assuming all other factors remain constant, if the milk from which was obtained the cream which was shipped into Boston from plants in Middle Western and Southern States had been included in the computation of the blended price for any delivery period between August 1, 1937 and December 31, 1937, the blended price for that period would have been different from the blended price announced by the Administrator. However, the Market Administrator testified that it was impossible for him to say whether the blended price that would have been computed in such an event would have been higher or lower than the blended price announced. Conversely, assuming all other factors remain constant, the exclusion of the New England milk received in Boston as cream which was actually included in the computation of blended prices would have again affected the blended prices computed by the Market Administrator, and in such case it affirmatively appears and I find that the blended price would have been higher and the bills to the defendants would have been less.

178. Article III, Section 2 of Order No. 4, as amended, provides in substance that milk classified as Class II milk on reports of handlers where sold to another handler or to a person not a handler who distributes or manufactures milk products shall be classified as Class I milk, unless the selling handler shall on or before the 15th day after the end of the delivery period during which such sale was made furnish proof satisfactory to the Market Administrator in support of Class II classification. In the period August 1, 1937 to September 30, 1937 Milton Cooperative Creamery reported sales to other handlers of Class II milk as shown upon the following tabulation and the Market Administrator received certificates respecting this milk on the dates set forth in the column headed Date Certificate Received by Administrator. These certificates were marked approved on the dates set forth in the column Date Proof Marked Accepted by Administrator. Where no date appears in such column or where the word 'none' appears there was no evidence that these certificates had ever been approved by the Administrator.

**Proof With Respect to Class II Sales by Milton Cooperative Creamery to Other  
Handlers or to Persons Who Manufacture or Sell and Distribute Milk.**

Period	Date Form 15 Received by Administrator	Class II Sales Reported on Schedule D	Handler or Person to Whom Sales Were Made	Date Certificate Received by Administrator	Date Proof Marked Accepted by Administrator	Remarks
August 1-15	August 21	548,256 303,620	Borden's Green Mountain Dairy Herlihy	August 24 August 24	September 2 September 2	Audit made in October and on Nov. 20 charged back to Milton as Class I because audit did not reveal it had been used as Class II
		4,760				
		8,500	Milton Coop. Cry.			
		1,275	Giroux	none	none	Charged back to Milton as Class I
August 26-31	September 8	10,710 1,360	Herlihy Giroux	none none	none none	Charged back to Milton as Class I
		6,290	Milton			Erroneously reported on schedule D because it was not a sale but an intercompany transaction
		570,570 287,385	Borden's Green Mountain	September 10	September 13	
						September 13 September 16

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September 1-15 September 23 16,405 Herlihy				Billed back to Milton as	
1,277	Giroux	none	none	Class I	
2,550	Milton			Billed back to Milton as	
				Class I	
				Treated as Class II be-	
				cause it was not a sale	
				but an intercompany	
				transaction	
529,970	Borden Milk	September 29			
289,000	Green Mountain	October 1			
	Dairy Co.				
305,380	A. J. Rusterholz	September 29			
5,115	A. J. Rusterholz	October 13			
September 16-30	17,085 Herlihy		none	none	Billed back to Milton as
					Class I
1,275	Giroux	none	none	Billed back to Milton as	
170	Milton			Class I	
514,718	Borden's	October 8	October 16	Not a sale	
281,095	Green Mt. Dairy	October 8	October 16		
312,213	A. J. Rusterholz	October 19	October 19		

All this milk was included in the initial computation for the period involved as Class II milk, although subsequently charges were made to the handler as indicated in the column Remarks. No recomputation of the blended price for the period was made. If these amounts of milk had been included in the original computation for the pay period as Class I milk, the blended price would have been increased and the amount of the payment by the defendants for equalization or producer settlement account would have been decreased.

179. In the period August 1, 1937 to October 31, 1937 New England Dairies reported sales to other handlers of Class II milk as shown upon the following tabulation and the Market Administrator received certificates respecting this milk on the dates set forth in the column headed Date Certificate Received by Administrator. These certificates were marked approved on the dates set forth in the column Date Proof Marked Accepted by Administrator. Where no date appears in such column or where the word 'none' appears there was no evidence that these certificates had ever been approved by the Administrator.

**Proof With Respect to Class II Sales by N.E.D. to Other Handlers  
or Persons Who Manufacture or Handle Milk.**

**Master's Report**

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Period	Date Form 15 Received by Administrator	Amount of Class II Sales on Schedule D	Name of Handler or Person to Whom Sale Was Made	Date Certificate Received by Administrator	Date Proof Marked Accepted by Administrator	Remarks
August 1-15	August 24		Numerous	September 8		Schedule D not reported until Sept. 3. Proof received covered all but 250 pounds of milk reported under Schedule D.
August 16-31	September 9	1,937,105	Numerous			
September 1-15	September 23	1,532				September 13
		2,162,851	Numerous	September 22	October 4	September 17 October 4
September 16-30	October 9					
October 1-15	October 24					October 16
October 16-31	November 9			November 2	November 3	
				November 17	November 17	

All this milk was included in the initial computation for the period involved as Class II milk although subsequently charges were made to the handler as indicated in the column Remarks. No recompilation of the blended price for the period was made. If these amounts of milk had been included in the original computation for the pay period as Class I milk, the blended price would have been increased and the amount of the payment by the defendants for equalization or producer settlement account would have been decreased.

180. In the period August 1, 1937 to September 15, 1937 United Farmers Cooperative Creamery reported sales to other handlers of Class II milk as shown by the tabulation on page 185 and the Market Administrator received certificates respecting this milk on the dates set forth in the column headed Date Certificate Received by Administrator. These certificates were marked approved on the dates set forth in the column Date Proof Marked Accepted by Administrator. Where no date appears in such column or where the word 'none' appears there was no evidence that these certificates had ever been approved by the Administrator.

All this milk was included in the initial computation for the period involved as Class II milk although subsequently charges were made to the handler as indicated in the column Remarks. No recompilation of the blended price for the period was made. If these amounts of milk had been included in the original computation for the pay period as Class I milk, the blended price would have been increased and the amount of the payment by the defendants for equalization or producer settlement account would have been decreased. Whenever the Market Administrator finds upon an audit that milk has been misclassified he reclassifies it and makes an appropriate debit or credit to the producer settlement account of the handler involved.

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### Proof With Respect to Class II Sales by United Farmers to Other Handlers or to Persons Who Manufacture or Sell and Distribute Milk.

Period	Date Form 15 Received by Administrator	Class II Sales Reported on Schedule D (pounds)	Handler or Person to Whom Sales Were Made	Date Certificate Received by Administrator	Date Proof Marked Accepted by Administrator	Remarks
August 1-15	August 24	30,664 1,290 19,350 8,600	M. Winer M. Winer Mark Moody Dutchland	none September 8 No evidence	August 20 none September 8 September 3	Certificate of proof was dated Aug. 21
		4,300	Maplewood Creamery	none	none	Billed to United Farmers as Class I
August 16-31	September 9	40,768 3,440 8,600 12,900 1,290	M. Winer Dutchland Dragone Mark Moody Patsy Voci	September 10 September 11 September 13 September 11 September 11	September 10 September 11 September 13 September 11	
September 1-15	September 24	8,170 5,762 860 9,400 30,698 1,720	Patsy Voci Dragone Weiler Mark Moody M. Winer Dutchland	September 30 September 30 September 30 September 30 November 8 October 8	September 30 September 30 September 30 September 30 not marked not marked	

**D. Handlers Excluded**

181. The table on pages 188-189 shows the handlers which were excluded from the computation of the blended price in one or more of the delivery periods between August 1 and December 31, 1937, and indicates the reason for the exclusion.

182. Attached hereto as Exhibit 13 is a tabulation showing the handlers whose milk was included in the computation of the blended price in one or more of the delivery periods between August 1, 1937, and December 31, 1937, showing this inclusion by periods and stations.

183. The table on pages 190-191 shows the total amount of milk reported by handlers during each delivery period from August 1, 1937, to and including December 31, 1937, which was not included in the price calculation. It also shows how much of the milk excluded in each period was excluded because it was reported too late to be included in the price calculation and how much of it was excluded because the reporting handler had not paid the net debit balance outstanding in the handler's producer settlement account which remained on the Market Administrator's books after making the entries for the delivery period next preceding but one.

*X. Method of Making Adjustments to Eliminate Milk Previously Included in a Handler's Account*

184. Whenever the Market Administrator discovered that there had been included in a handler's account for any preceding delivery periods milk reported as received at a plant which was not eligible to participate in the marketing plan established in the order, he adjusted the handler's accounts to exclude that milk. The adjustment was made in this way: The total amount of milk received at that plant which was reported as Class I was multiplied by the applicable Class I price and the total amount of milk received at that plant which was reported as Class II was multiplied by the applicable Class II price. Adding the value of the Class I milk to the value of the Class II milk the Market Administrator obtained the total value of all milk reported as received at the particular plant. The Market Administrator then computed with respect to the milk reported from these stations the net amount of freight and outside market differentials which had been included in the handler's original account. This net amount was then added to or deducted from the total value of the milk, depending on whether or not the net differentials had been added or deducted in the original account. The Market Administrator then deducted the figure thus obtained from the total amount which the handler had originally been credited with having paid his producers at the particular plant. The resulting balance was then debited or credited to the handler's account so that it would offset the debit or credit originally allowed and an offsetting credit or debit was made in the adjustment reserve account on the Market Administrator's books.

LIST OF HANDLERS WHO ON FEBRUARY 5 HAD SUBMITTED REPORTS ON FORM 15 TO THE MARKET ADMINISTRATOR AND WHOSE REPORTS HAD NOT BEEN INCLUDED IN THE COMPUTATION OF THE BLENDED PRICE FOR ONE OR MORE OF THE DELIVERY PERIODS AUGUST 1 THROUGH DECEMBER 31, 1937, AND THE FACTS WHICH PRECLUDED THEIR INCLUSION



**MARKET ADMINISTRATOR — GREATER  
Amount of Milk reported by Handlers up  
in the Calculation of the Blended  
August 1 and De-**

1937		Total amount of milk reported		Amount of milk included in the price calculation		Total amount of but not in price calcu-
		Net Class I	Class II	Net Class I	Class II	
<b>August</b>	1-15	24,856,840	18,120,234	22,917,482	17,893,189	1,939,358
	16-31	25,933,885	18,663,073	24,214,758	18,408,423	1,719,127
<b>September</b>	1-15	22,933,797	17,656,175	6,347,588	12,620,656	16,586,209
	16-30	22,218,431	18,286,207	5,646,952	13,078,261	16,571,479
<b>October</b>	1-15	22,550,302	17,225,394	5,702,205	11,832,970	16,848,097
	16-31	24,670,237	13,229,596	6,765,991	9,055,621	17,904,246
<b>November</b>	1-15	23,782,848	7,698,389	7,570,563	5,216,103	16,212,285
	16-30	23,088,163	7,716,502	7,484,730	4,933,235	15,603,433
<b>December</b>	1-15	22,578,728	8,846,948	6,910,531	5,973,405	15,668,197
	16-31	22,718,615	11,690,503	6,887,403	7,394,965	15,831,212
<b>Totals</b>		<b>235,331,846</b>	<b>139,133,021</b>	<b>100,448,203</b>	<b>106,406,828</b>	<b>134,883,643</b>

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## BOSTON MARKETING AREA

to April 8, 1938, and Milk not included

Price for each period between

December 31, 1937

Milk reported by handlers but not included in the price calculation because handler had not paid the net debit balance for equalization after making the entry for the next preceding period but one.

milk reported  
cluded in the  
lation

By handlers who had a debit  
billing in the period next  
preceding but one

By handlers who had a credit  
billing in the period next  
preceding but one

Milk reported by handlers but  
too late to be included in  
the price calculation  
each period

Class II	Net Class I	Class II	Net Class I	Class II	Net, Class I	Class II
227,045	—	—	—	—	1,939,358	227,045
254,650	—	—	—	—	1,719,127	254,650
5,035,519	14,938,106	4,819,387	—	—	1,648,103	215,832
5,207,946	13,760,939	4,653,420	8,763	1,299	2,801,777	553,227
5,392,424	13,872,394	4,784,981	—	—	2,975,703	607,443
4,173,975	14,485,838	3,821,979	—	—	3,418,408	551,996
2,482,986	12,928,777	2,200,295	—	—	3,283,508	281,991
2,783,267	13,368,572	2,574,315	—	—	2,234,861	208,952
2,873,543	13,299,031	2,359,503	288,030	187,907	2,081,136	326,133
4,295,538	13,882,683	3,884,528	584,353	188,694	1,364,176	222,316
32,726,193	110,536,340	28,898,708	881,146	377,900	23,466,157	3,449,585

185. The following table shows the adjustments which were made by the Market Administrator to exclude from the accounts of New England Dairies, Inc., the plants Hiram, Cummings, Irona, and Hoosick and the adjustment made to exclude from the accounts of Milton Cooperative Dairy Corporation the Swanton plant.

	Aug. 1-15	Aug. 16-31
New England Dairies, Inc.		
Original producer settlement credit	\$29,517.01	\$31,251.60
Debit adjustment for the Cummings, Irona, and Hiram plants	6,264.98 Dr.	6,165.34 Dr.
Credit adjustment for the Hoosick plant <sup>1</sup>	9.18 Cr.	189.64 Cr.
Net amount	\$23,261.21	\$25,275.90
Milton Cooperative Dairy Corporation		
Original equalization credit	\$6,117.97	\$5,724.42
Debit adjustment for Swanton plant	2,170.03	2,096.89 Dr.
Net amount	\$3,947.94	\$3,627.53

<sup>1</sup>Debit adjustments were also made for this plant for the periods September 1 through November 15, 1935, amounting to a total of \$700.72.

186. Adjustments made in the manner described in Findings 184 and 185 *supra* do not affect the blended price for the delivery periods to which they apply. However, such adjustments do affect the cash reserve account and hence the blended price for the delivery period in which the adjusted cash reserve account is disbursed. Thus, if as a result of such an adjustment, the Market Administrator debits the account of a handler and the amount of that debit is received by the Market Administrator either as a payment or by an offset against some credit to the handler, the amount of the debit is credited to the Market Administrator's cash reserve account and where there is substantial compliance with the order the amount of that credit,

together with the amount of all similar credits with respect to the same delivery period, would be prorated by the Market Administrator in the shape of an appropriate addition to the blended price announced by the Market Administrator in some subsequent delivery period.

187. All producers delivering milk in the period in which the proration referred to in Finding 186 *supra* is made, share in the proration, which is made on a hundredweight basis, in the same proportion as their deliveries of milk in that period. The producers not classified as new producers who delivered no milk in the period in which the milk in question was erroneously included in the computation of the blended price but delivered milk in the period in which the pro rata distribution is made share in the proration. A producer who delivered milk in the period in which the milk in question was erroneously included in the computation of the blended price but delivered no milk in the period in which the pro rata distribution was made would get no share of the adjustment.

188. The adjustments for the two delivery periods in August, as shown in the tabulation contained in Finding 185 *supra*, although made in September, have not affected the blended price in any delivery period to and including December 31, 1937. The explanation for this is that the accounts for the two delivery periods in August have not been liquidated. The Market Administrator testified that if he is subsequently able to liquidate the accounts for those delivery periods, he will have to ask the Secretary of Agriculture for instructions as to what to do with the benefit of the adjustments which he made with respect to the Cummings, Hiram, and Irona plants of New England Dairies.

## XI. Effect of Exclusion and Inclusion of Milk

### A. On the Blended Price

189. There is a relationship between the amount of Class II milk included in the computation of the blended price

and the level of the blended price. An increase in the amount of Class II milk included in the computation of the price tends to decrease the level of the blended price.

#### B. On the Equalization Payments

190. If the blended price in any delivery period had been higher than the blended price originally computed, the amount debited to any handler in the producer settlement account would have been smaller than the amount originally so debited.

#### C. On the Bills Rendered to Handlers

191. The level of the blended price does not affect in any way the total charge to the handler as computed by the Market Administrator on the basis of the prices fixed in the order for the milk which he receives from producers in a particular delivery period. The blended price is not used in computing such charge. In other words, neither the exclusion nor inclusion of another handler's milk from the computation of the blended price nor the level of the blended price affects in any way the figures which appear on the bill to the handler opposite the heading "Total milk received from producers and value thereof;" those factors affect only the figures on that part of the bill headed "Credits to your producer settlement account for amounts payable to your producers for 3.7 milk, etc." and the "Balance due Administrator for produced settlement".

## PART V

## THE REFERENDUM ON THE AMENDMENTS

192. For the purpose of ascertaining whether the issuance of the amendments to Order No. 4 was approved or favored by producers, a referendum was conducted on July 16 and 17, 1937 (See § 8c(19) of the Act). The referendum was under the immediate supervision of R. D. Aplin, Senior Marketing Specialist in the Department of Agriculture. On July 12, 1937, Mr. Aplin sent the following letter, together with a list of polling places and a copy of the proposed order, to approximately 7,900 producers who were not, according to the records which Mr. Aplin had, members of any cooperative association:

UNITED STATES DEPARTMENT OF AGRICULTURE  
Room 407, Post Office Bldg.,  
Boston, Mass.

July 12, 1937.

Dear Sir:

There is enclosed a copy of a compilation of Order No. 4 regulating the handling of milk in the Greater Boston marketing area, which incorporates certain proposed amendments to that order.

The proposed amendments will not be issued by the Secretary of Agriculture, and the provisions of Order No. 4 relating to prices, pooling, and payments to producers will not become effective, unless the issuance of these amendments is approved by at least two-thirds of the producers producing milk for sale in the Greater Boston marketing area during the month of May 1937, as evidenced by the votes of the producers who participate in the referendum.

Enclosed is a list of the times and places at which you may cast a ballot to show your approval or disapproval of these amendments. You may visit whichever polling place is most convenient to you. When you go there to vote, it will be necessary for you to sign a

register book with your name and initials identically the same as they appear on the envelope in which this letter come to you.

The questions which will appear on the ballot will be as follows:

1. How much milk did you deliver during the month of May 1937 to a handler (Boston dealer)?
2. What is the name of the handler to whom your milk was delivered?
3. What is the location of the handler's plant to which your milk was delivered in May 1937?
4. What is the name of the county and state in which is located the farm where the above milk was produced?
5. Do you approve the issuance of the amendments to Order No. 4 which would make that order read as shown in the attached compilation thereof, released by the United States Department of Agriculture under date of July 9, 1937?

Your vote on question No. 5 will indicate your approval or disapproval of the amendments to Order No. 4 which are contained in the enclosed compilation, referred to on the ballot.

At the polling place you will mark your ballot in secret, fold and place it in a sealed can which will not be opened until the ballots are counted at Boston. The vote of each producer will be kept strictly confidential, under rigid government regulations.

Very truly yours,

RICHARD D. APLIN

Enclosure.

Senior Marketing Specialist.

193. The letter giving notice of the referendum was not sent to individual members of cooperative organizations, but each association was notified by a letter sent July 12, 1937, in the following form:

Gentlemen:

July 12, 1937

There is enclosed a copy of a compilation of Order No. 4 regulating the handling of milk in the Greater Boston Marketing Area which incorporates certain proposed amendments to that Order.

The proposed amendments will not be issued by the Secretary of Agriculture, and the provisions of Order No. 4 relating to prices, pooling, and payments to producers will not become effective unless the issuance of these amendments is approved by at least two-thirds of the producers producing milk for sale in the Greater Boston Marketing Area during the month of May 1937, as evidenced by the votes of the producers who participate in the referendum.

If your association wishes to express the approval or disapproval of your members upon the proposed amendments it will be necessary for you to mark and return the enclosed ballot. The ballot must be mailed not later than Saturday, July 17, to Richard D. Aplin, Senior Marketing Specialist, Room 407, Post Office Building, Boston, Massachusetts.

Very truly yours,

/S/ RICHARD D. APLIN

Senior Marketing Specialist

RF

Enc.

194. Certain other steps were taken to call the referendum to the attention of the producers. An announcement of the referendum was given to the Associated Press for release to the newspapers in New England and this notice was published in a number of papers. Announcements were also sent to certain other magazines and papers and announcements were made over the radio. In addition there were thirty-three public meetings held throughout the milkshed in the week preceding the election at which announcements were made with respect to the referendum.

195. The votes of individual producers who were not members of any cooperative association were taken by ballots cast in person by the producer at polling places located throughout the milkshed. They were not permitted to vote by proxy or by mail. The votes on behalf of producers who were members of cooperative associations, with one exception, were taken by each cooperative association mailing to Mr. Aplin a single ballot covering the votes for all its members. The forms of the individual and of the cooperative ballots are hereto annexed as Exhibits 14 and 15. One cooperative, the Caledonia County Cooperative Association, elected not to vote on behalf of its members, and fifty-three of its members voted as individuals. Except in the case of three cooperatives, Mr. Aplin at no time obtained or kept any record of the names of the individual producers for whom the cooperative associations voted as a unit, although from an investigation of the records of the cooperatives he determined and kept a record of the number of votes which they were qualified to cast. By checking the individual ballots against information in his possession, Aplin was able to eliminate and did eliminate ballots cast by individual producers for whom a cooperative had voted as a unit. The total number of votes thus determined to be qualified to be cast by cooperative associations (exclusive of Caledonia County Cooperative Association) was 8,437.

196. In each case the ballot of the cooperative was signed with the name of the association and under that was the signature of the officer signing and his title. Mr. Aplin made no investigation to determine whether the person signing the ballot held the office he claimed to hold. Neither did Mr. Aplin investigate the by-laws of the association to determine what powers they had to vote for their members.

197. On July 14, 1937, the respective boards of directors of New England Milk Producers Association and New England Dairies, Inc. enacted the following resolution:

That this Association express its approval of the proposed amendments to the federal order No. 4 regulating

the marketing of milk in the greater Boston market, and that the president be and he hereby is authorized and directed to signify the approval of this Association in writing to the Agricultural Adjustment Administration.

198. No poll was taken by either the New England Dairies or the New England Milk Producers Association of their individual producer members on this matter of the approval of the amendment, nor was any meeting of their individual members held in this connection. No proxies were obtained from the individual members of either association. No subsequent approval, either oral or written, was obtained from the individual members of either association of the action of the respective boards of directors in authorizing the presidents to cast a ballot of the association in favor of the proposed amendment to Order No. 4.

199. The following table shows the results of the referendum:

	For the Amendments	Against	Total
Individual Producers	1,102	1,954	3,056
Cooperative Associations	7,265	1,172	8,437
Total	8,367	3,126	11,493

200. All of these cooperative associations except Bellows Falls Cooperative Creamery voted in favor of the amendments; the vote of Bellows Falls Cooperative Creamery was cast in the negative. The following tabulations show the number of votes cast by each cooperative association which voted as a unit for its members and the stations at which the producers for whom the association voted delivered their milk:

BALLOTS OF CO-OPERATIVE ASSOCIATIONS

	Number of votes Counted
<b>Independent Co-operatives:</b>	
Bellows Falls Co-op. Creamery	1,172
Cabot Farmers' Co-op. Creamery Co.	187
Kenduskeag Valley Creamery	40
Manchester Dairy, Inc.	174
Milton Co-op. Dairy Corp.	706
United Dairies, Inc.	137
United Farmers' Co-op. Creamery Assn.	1,710
<b>Total—Independent Co-operatives</b>	<b>4,126</b>
<b>New England Dairies, Inc. Co-operatives:</b>	
Bethel Co-operative Creamery, Inc.	162
Burlington Co-operative Creamery Assn., Inc.	51
Clyde Valley Co-operative Creamery Co., Inc.	122
Grand Isle County Co-operative Creamery Association, Inc.	141
Granite City Co-operative Creamery Assn. Inc.	76
Mt. Mansfield Co-operative Creamery & Grain Association	134
Richmond Co-operative Association, Inc.	314
St. Albans Co-operative Creamery, Inc.	250
Shelburne Co-operative Creamery Company	178
Tunbridge Co-operative Creamery, Inc.	45
White River Valley Co-operative Creamery Association	77
New England Milk Producers Association	2,196
New England Dairies, Inc.	565
<b>Total—New England Dairies, Inc. Co-operatives</b>	<b>4,311</b>
<b>TOTAL—ALL CO-OPERATIVE ASSOCIATIONS</b>	<b>8,437</b>

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### NEW ENGLAND MILK PRODUCERS ASSOCIATION BALLOTS BY PLANTS

	Number of Votes Counted
<b>New England Dairies, Inc., Plants:</b>	
Bradford	119
Cambridge Junction	38
Chelsea	53
Concord	103
Craftsbury	26
Detroit	51
E. Berkshire	97
Enosburg Falls	132
Essex Center	37
Fairlee and W. Fairlee	120
Greensboro	43
Hough's Crossing	107
W. Indoes	61
Morrisville	28
Newbury	54
Oakland	182
Orleans and Irasburg	117
Salisbury	69
Shoreham	74
Union	86
<b>Total—New England Dairies, Inc., Plants</b>	<b>1,597</b>
<b>New England Dairies, Inc., Affiliated Co-operatives'</b>	
<b>Plants:</b>	
Clyde Valley Co-operative Creamery Co., Inc. Derby	28
Clyde Valley Co-operative Creamery Co., Inc.	
Island Pond	3
Granite City Co-operative Creamery Ass'n. Inc.	18
St. Albans Co-operative Creamery, Inc.	7
<b>Total—Affiliated Co-operatives</b>	<b>56</b>
<b>Other Handlers' Plants:</b>	
W. T. Boyd & Sons, Inc.	80
Deerfoot Farms Co.	34
Lyndonville Creamery Assn.	38
Marland Dairy Co.	25
J. B. Prescott Co.	109
Shawsheen Dairy, Inc.	6
Strafford Creamery Company	43
White Bros. Milk Co.	107
Wells River Creamery	27
United Dairies System	74
<b>Total—Other Handlers' Plants</b>	<b>543</b>
<b>TOTAL—NEW ENGLAND MILK PRODUCERS ASSOCIATION</b>	<b>2,196</b>

## NEW ENGLAND DAIRIES, INC., BALLOTS BY PLANTS

	Number of Votes Counted
Clyde Valley Co-operative Creamery Co., Inc., Island Pond	133
Mt. Mansfield Co-operative Creamery & Grain Association	115
New England Dairies, Inc.,—Concord	194
New England Dairies, Inc.,—North Haverhill	123
<b>TOTAL—NEW ENGLAND DAIRIES, INC.</b>	<b>565</b>

201. Mr. Aplin also counted the votes according to volume. The result of this count was as follows:

57,573,173 pounds of milk in favor of the amendment  
24,362,569 pounds of milk opposed to the amendment

The volume figures were not announced by the Department of Agriculture and were not used for the purpose of determining whether or not the amendments should be issued. The announcement which was made by the Department, on August 11, 1937, stated the result in terms of the number of producers voting for and against the amendment.

202. The producers who were permitted to vote and for whom cooperatives were permitted to cast votes were those determined by Mr. Aplin to have delivered milk to a station in the month of May 1937 which station, in that month, shipped some part of its products to the marketing area as milk or cream and was approved by one or more of the health authorities in the marketing area. See paragraph 30 of this report.

203. In determining producers eligible to vote, a plant which shipped any part of its product to the Boston marketing area either as milk or as cream was considered as having shipped to the Boston marketing area—the fact that the greater percentage of the plant's products may have gone elsewhere made no difference. No attempt was made to de-

termine whether milk or cream was shipped into the marketing area was consumed there or shipped elsewhere.

204. Mr. Aplin made no attempt to determine whether any of the persons voting either as individuals or through cooperative associations had certificates of registration issued by the Division of Dairying and Animal Husbandry of the Department of Agriculture of the Commonwealth of Massachusetts. No person was excluded from participation in the referendum because he did not possess such a certificate and no vote cast by a cooperative was excluded because the producer for whom the vote was cast did not have such a certificate.

205. During the period from May 1, 1937, to and including the date upon which the votes cast in the referendum on the amendments to Order No. 4 were counted, it was, as a practical matter, impossible for the person in charge of such referendum to determine whether or not the producers whose names were reported to him as having produced milk for sale and which was sold in the Boston market in the month of May, 1937, did in fact hold certificates of registration as provided in sections 16A-I of chapter 94 of the General Laws of the Commonwealth of Massachusetts in effect for the said month of May, 1937. A substantial number of producers not in excess of twenty-five per cent of those voting in the referendum, who did not in fact hold the aforesaid certificates of registration, voted as individuals or were voted for by cooperatives in the referendum on the amendments to Order No. 4. The aforesaid producers who did not hold certificates of registration delivered their milk to plants of handlers who were licensed under General Laws, Chapter 94, Section 40, to distribute and sell milk from said plants in one or more cities and towns in the marketing area. Such licenses were licenses to sell and distribute milk according to law and the regulations of the appropriate municipal health officers. Further facts concerning certificates of registration and the possession thereof by producers delivering to handlers shipping milk to the marketing area are found above in paragraphs 171 to 174 inclusive.

206. Twenty-two hundred affirmative votes were cast by cooperative associations for producers delivering to plants which shipped only cream into the marketing area during the month of May 1937. If these producers were ineligible to vote, and if these votes should be eliminated and no other votes were eliminated the vote on the referendum would not have carried and the Order would not have become effective.

207. Substantial amounts of cream were shipped into Boston in May 1937 from states in the south and middle west. These shipments were made from plants in those areas and the cream was obtained from milk produced in those areas. None of these plants were approved for the distribution and sale of fluid milk by any city or town in the marketing area. The farmers delivering milk to these plants did not have certificates of registration issued pursuant to Massachusetts General Laws, Chapter 94, Section 16(e). This situation was known to Mr. Aplin. For further findings regarding these southern and midwestern dealers and producers see Paragraph 176.

208. Detailed evidence was introduced as to one such plant, which was located in Indiana. That plant had 1,371 producers delivering milk to it in May 1937, and in that month it shipped 41% of its milk receipts to Boston in the form of cream. Each month during the year 1937 there were substantial shipments of cream from this station to Boston, and in each month except March, April, May, and June the majority of the output of the station came to Boston. If these producers delivering to this plant had been eligible to vote and had voted in the negative, the referendum would not have carried and the Order would not have become effective.

209. No milk producers in the middle west or the south voted in the referendum. No announcement as to the referendum was made in the middle west or the south. No polling places were established in the south or middle west. All producers whose votes were counted delivered to stations located either in Maine, New Hampshire, Vermont, Massachusetts, or New York.

210. In the referendum 2,266 votes counted in favor of the amendments were cast by cooperatives for producers delivering to stations which shipped less than 50% of their receipts to the greater Boston marketing area in the month of May 1937, and five of these stations, casting a total of 723 votes, shipped less than 17% of their receipts to the marketing area in that period. One thousand three hundred and forty-nine votes were cast by cooperatives in favor of the amendment for producers delivering to stations shipping 41% or less of their receipts to Boston.

211. If the 2,266 producers referred to in the preceding paragraph were ineligible to vote and their votes should be eliminated and no other votes were eliminated, the vote on the referendum would not have carried and the amendment to Order No. 4 would not have become effective.

212. In May 1937 13,175,850 pounds of milk came to Boston in the form of cream from plants located in states in the Middle West and Midsouth, and this volume of milk, had it voted in the negative on the referendum, would have resulted in the referendum being lost on a volume count and the Order would not have become effective. Furthermore, at least 6,374,992 pounds of the milk delivered in May 1937 by the producers whose votes were counted by Aplin did not come to Boston either in the form of milk or cream, but went to some other market entirely.

#### THE BASE PERIOD AND PARITY PRICES

213. The term parity price is used to describe a price that will give an agricultural commodity a purchasing power with respect to articles that farmers buy equivalent to the purchasing power of such agricultural commodity during a stated base period. A parity price can be determined by a computation involving (a) the price paid to farmers for the agricultural commodity during the base period and (b) an appropriate series of index numbers of prices paid by farmers for articles bought, covering both the base period and the period for which the parity price is to be computed, here-

after referred to as the instant period. This computation, hereafter referred to as a parity computation, consists in determining, first, the percentage change between the base period and the instant period in the index of prices paid by farmers for articles bought and, second, the price paid to farmers for the agricultural commodity which reflects the same percentage change from the base period, such price being the parity price. In other words, the series of index numbers of prices paid by farmers for articles bought is adjusted so that 100 equals the average of the index numbers during the base period, and the parity price is computed by multiplying the price paid to farmers for the agricultural commodity during the base period by the index number for the instant period for articles bought by farmers.

214. On January 25, 1936, the Secretary of Agriculture made the following finding:

By virtue of the authority vested in the Secretary of Agriculture by the Agricultural Adjustment Act, approved May 12, 1933, as amended, the Secretary of Agriculture does hereby find and proclaim that in connection with the execution of a marketing agreement and the issuance of an order regulating the handling of milk in the Greater Boston, Massachusetts, Marketing Area, the purchasing power of such milk during the base period August 1909 to July 1914 cannot be satisfactorily determined from available statistics in the Department of Agriculture, but that the purchasing power of such milk can be satisfactorily determined from available statistics in the Department of Agriculture for the period August 1919 to July 1929; and the period August 1919 to July 1929 is hereby found and proclaimed to be the base period to be used in connection with ascertaining the purchasing power of milk handled in the Greater Boston, Massachusetts, Marketing Area, for the purpose of the execution of a marketing agreement and the issuance of an order regulating the handling of said milk in that area.

215. Before and since January 25, 1936, there was in the statistics of the Department of Agriculture available to the Secretary a series of index numbers of prices of articles bought by farmers currently and during each year back to and including 1910. This series, hereafter referred to as the national index of articles bought, is commonly used by agricultural economists and statisticians and is substantially the same one upon which is based all of the evidence which was submitted to the Secretary at public hearings in justification of the prices established by both the original Order No. 4 and amended Order No. 4. Attached hereto as Exhibit 16 is a tabulation by years of the national index for the years 1910 to 1936, inclusive, extended as to the index for all commodities bought by months for the year 1937. Also attached hereto as Exhibit 17 is a pamphlet published by the United States Department of Agriculture entitled "Index Numbers of Prices Paid by Farmers for Commodities" which gives further details as to this index. This is a nation-wide index.

216. In February 1937, after the original finding on the base period of January 25, 1936, but before the promulgation of the amendment to Order No. 4 on July 28, 1937, there was published in the Department of Agriculture a pamphlet entitled "Wholesale Prices Received by Farmers for Whole Milk 1909-1936," a copy of which is annexed as Exhibit 18. This document has been in the files of the Department of Agriculture since February 1937.

217. The prices appearing in the pamphlet entitled "Wholesale Prices Received by Farmers for Whole Milk 1909-1936" are not on a classified basis but represent the aggregate price received by farmers for the whole milk sold by them for the years in question.

218. Under the provisions of the Agricultural Adjustment Act of 1933, the Secretary, effective November 3, 1933, entered into a marketing agreement and, in connection therewith, issued a license governing the handling of milk in the greater Boston market. In so doing he found as follows:

Whereas, it appears after due consideration that this is a marketing agreement between the Secretary and persons engaged in the handling of milk and its products within the meaning of said section in the current of interstate commerce; and

Whereas, it appears after due consideration that the aforesaid marketing agreement will tend to effectuate the policy of Congress set forth in section 2 of the act in that such marketing agreement will,

(a) Establish and maintain such balance between the production of milk in the New England milk shed and consumption of such milk and its products in the Greater Boston market, and such marketing conditions therefor as will reestablish prices to the producers thereof at a level that will give such agricultural commodity a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of such agricultural commodity in the base period as defined in section 2 of the act; and

(b) Approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is possible in view of the current consumptive demand in domestic and foreign markets; and

(c) Protect the consumer's interest by retaining the production of such agricultural commodity at such level as will not increase the percentage of the consumer's retail cost for such agricultural commodity or products derived therefrom which is returned to the farmer above the percentage which was returned to the farmer in the pre-war period August 1909-July 1914; and . . .

Section 2 of the Agricultural Adjustment Act of 1933 was as follows:

It is hereby declared to be the policy of Congress—

(1) To establish and maintain such balance between the production and consumption of agricultural com-

modities, and such marketing conditions therefor, as will reestablish prices to farmers at a level that will give agricultural commodities a purchasing power with respect to articles that farmers buy, equivalent to the purchasing power of agricultural commodities in the base period. The base period in the case of all agricultural commodities except tobacco shall be the prewar period, August 1909-July 1914. In the case of tobacco, the base period shall be the postwar period, August 1919-July 1929.

(2) To approach such equality of purchasing power by gradual correction of the present inequalities therein at as rapid a rate as is deemed feasible in view of the current consumptive demand in domestic and foreign markets.

(3) To protect the consumers' interest by readjusting farm production at such level as will not increase the percentage of the consumers' retail expenditures for agricultural commodities, or products derived therefrom, which is returned to the farmer, above the percentage which was returned to the farmer in the prewar period, August 1909-July 1914.

219. Order No. 4 as amended provides for a marketwide equalization pool under which a blended price is paid all producers computed on the basis of the Class I and Class II prices applied to the respective amounts of Class I and Class II milk.

220. Under Order No. 4 as amended the Class II price and the percentage of surplus are the two variable factors in computing the blended price. Assuming that other factors remain constant, decline in the Class II price causes a corresponding decline in the blended price, while a decline in the percentage of surplus causes a rise in the blended price.

221. The formula fixed in Order No. 4 as amended for determining the price of Class II milk has as its two basic factors the price of cream in the Boston market and the price of casein as quoted at New York. Casein is a skim milk

product and the price of it gives a representative value for skim milk. The Class I price as fixed in Order No. 4 as amended is in no way used in computing the Class II price.

222. There is no provision in the Order fixing or controlling the Boston price of cream or the New York price of casein, on which the Class II price of the Order depends. They are fixed by open competition of cream and casein producers in various sections of the United States, and they do actually vary from time to time, thus causing corresponding variations in the Class II price under the Order and in the blended price which the farmer receives.

223. There is no provision in Order No. 4 as amended which fixes a percentage of surplus in the market or which tends to control the amount of milk in the milkshed.

224. Increases in the price to producers in the Boston Milk Shed tend to stimulate the production of milk by producers in the milkshed and at times to draw new producers into the Boston market. From November, 1933, to August, 1936, there was an increase in the total volume of milk produced for the Boston market.

225. The percent of surplus actually varies from year to year and in some cases the variation is substantial. The yearly average percentage of Class II milk (surplus) of the New England Milk Producers Association for the years 1919 to 1932 inclusive and for New England Dairies Inc. for the years 1933 to 1936 inclusive is shown by the following table:

THE AVERAGE PERCENTAGE OF CLASS II MILK (SURPLUS) IN THE  
GREATER BOSTON MARKET BY YEARS

NEW ENGLAND MILK PRODUCERS' ASS'N.  
AND  
NEW ENGLAND DAIRIES, INC.

Year	Yearly Average
1919	32.8
1920	32.0
1921	39.0
1922	39.6
1923	42.9
1924	42.6
1925	45.4
1926	48.0
1927	47.6
1928	44.6
1929	42.5
1930	47.3
1931	34.0
1932	27.4
1933	31.4
1934	40.0
1935	50.1
1936	52.8

226. The prices that farmers pay for articles which they buy vary from year to year and from month to month. There is no provision in the Order fixing or controlling such prices. There is no provision in the Order which causes the blended price to vary as the prices that farmers pay for articles they buy vary.

227. I find that although the Class I price under the order is fixed, but the Class II price is not fixed, and the percentage of surplus is not fixed, the mere fact that the Class I price is fixed does not tend to cause the percentage of surplus in 1937 to approach the percentage of surplus in the post-war period.

228. The following groups of findings are made with respect to the specific cases designated in the heading of each group, and are not applicable to any cases other than those designated in such heading.

UNITED STATES ET AL. V. H. P. HOOD & SONS, INC. AND  
NOBLE'S MILK COMPANY, No. 4519

*The Defendants*

229. The defendant H. P. Hood & Sons, Inc. is a corporation organized under the laws of the Commonwealth of Massachusetts and having its principal place of business at 500 Rutherford Avenue, Boston, in said Commonwealth. It purchases milk from over three thousand producers located in the States of Maine, New Hampshire, Vermont, Massachusetts, and New York. A portion of the milk so purchased is transported to the distributing plant of the defendant corporation in Boston in interstate commerce, and is there processed and then distributed and sold by the defendant in the Boston marketing area. Some of the milk purchased by the defendant corporation H. P. Hood & Sons, Inc. is processed at its country stations located elsewhere than in Boston and the products are then shipped into Boston. H. P. Hood & Sons, Inc. operates receiving stations at Auburn, West Farmington, Unity, and Belfast, all in the State of Maine; at Colebrook, West Canaan, and Lancaster, all in the State of New Hampshire; at Barnett, Plainfield, Barton, Hardwick, Orleans, Newport, Fairfield, St. Albans, and Sheldon Junction, all in the State of Vermont; and at Eagle Bridge and Salem in the State of New York. H. P. Hood & Sons, Inc. also purchases milk from producers located within the Commonwealth of Massachusetts and processes and distributes and sells the milk of these producers in the Boston marketing area. In the delivery period August 1-15, 1937, H. P. Hood & Sons, Inc. purchased milk from a total of 3,186 producers. Of this total, 902 delivered to its plants located in the State of Maine, 473 to its plants located in the State of New York, 1,367 to its plants located in the State of Vermont, 371 to its plants located in the State of New Hampshire, and 73 to its Charlestown plant in the Commonwealth of Massachusetts. H. P. Hood & Sons, Inc. also from time to time purchases

milk from other handlers and distributes and sells such milk in the Boston marketing area.

230. The following table shows the amounts of milk purchased by the Hood Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

H. P. HOOD & SONS, INC.

Receipts of Milk (in pounds)

Period		From Producers	From Own Farm Production	From Noble's Milk Company	From Other Handlers	Total
August	1-15	9,539,958	97,512	525,724	109,574	10,332,774
August	16-31	9,944,839	99,979	604,631	79,398	10,728,847
September	1-15	9,565,868	89,233	566,844	61,954	10,283,899
September	16-30	9,547,716	89,413	571,646	47,832	10,256,607
October	1-15	9,245,041	97,638	593,659	45,619	9,981,957
October	16-31	8,736,543	89,420	606,914	157,176	9,590,053
November	1-15	7,267,989	92,808	527,177	427,900	8,315,874
November	16-30	7,068,388	96,926	497,540	470,022	8,132,876
December	1-15	7,161,717	102,764	488,505	136,632	7,889,615
December	16-31	7,859,871	115,268	538,463	49,695	8,563,297

## Disposition of Milk (in pounds)

Period	Sold for Class I Purposes			Sold for Class II Purposes			Percent Class II is of All Milk	Total
	Inside Marketing Area	Outside Marketing Area	Total	In and Outside Marketing Area	Total			
August 1-15	6,966,536	1,343,551	8,310,087	2,022,687	20	10,332,774		
August 16-31	7,723,665	1,119,063	8,842,728	1,886,119	18	10,728,847		
September 1-15	7,259,916	609,707	7,869,623	2,414,276	23	10,283,899		
September 16-30	7,357,163	360,366	7,717,529	2,539,078	25	10,256,607		
October 1-15	7,388,241	346,877	7,735,118	2,246,839	23	9,981,957		
October 16-31	7,863,951	383,563	8,247,514	1,342,539	14	9,590,053		
November 1-15	7,342,128	367,841	7,709,969	605,905	7	8,315,874		
November 16-30	7,119,195	319,311	7,438,506	694,370	9	8,132,876		
December 1-15	7,100,658	317,724	7,418,382	471,236	6	7,889,618		
December 16-31	7,232,971	271,598	7,504,569	1,058,728	12	8,563,297		

231. The following table shows the purchases by the Hood Company between August 1 and December 31, 1937, from other handlers all of whose producers reside outside the Commonwealth of Massachusetts:

<u>Period</u>	<u>Handlers from whom purchased</u>	<u>Pounds of Milk</u>
August 1-15	New England Dairies, Inc.	30,100
August 16-31	United Farmers Cooperative Creamery	34,830
October 16-31	New England Dairies, Inc.	27,935
	United Farmers Cooperative Creamery	20,210
	Bellows Falls Cooperative Creamery	64,500
November 1-15	United Farmers Cooperative Creamery	234,365
	New England Dairies, Inc.	22,360
November 16-30	United Farmers Cooperative Creamery	218,902
	Bellows Falls Cooperative Creamery	64,500
	New England Dairies, Inc.	137,785
December 1-15	United Farmers Cooperative Creamery	47,213
	Bellows Falls Cooperative Creamery	21,250
	New England Dairies, Inc.	22,355

232. The defendant Noble's Milk Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and having its principal place of business at 500 Rutherford Avenue in the City of Boston in said Commonwealth. It is a subsidiary of the defendant H. P. Hood & Sons, Inc. and it is operated under the same general policy as that corporation. It purchases milk from producers located in the State of Vermont who furnish a very small proportion of its total milk supply. The defendant also purchases milk from producers located in the Commonwealth of Massachusetts who furnish by far the greater proportion of its total milk supply. The milk from Vermont producers and the Massachusetts producers is received and commingled at the plant of Noble's Milk Com-

pany located at Shelburne Falls, Massachusetts. Noble's Milk Company sells its milk received from producers to the defendant H. P. Hood & Sons, Inc. which contributes to the processing of such milk and then distributes and sells it in the greater Boston marketing area.

233. The following table shows the amount of milk purchased by the Noble Company from producers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk.

**NOBLE'S MILK COMPANY**

Period	RECEIPTS OF MILK (in pounds)		DISPOSITION OF MILK (in pounds)			Total
	From Producers	Total	Inside Marketing Area	Outside Marketing Area		
August 1-15	585,724	585,724	580,826	4,898	585,724	
August 16-31	604,631	604,631	584,587	20,044	604,631	
September 1-15	566,844	566,844	561,815	5,029	566,844	
September 16-30	571,646	571,646	571,646		571,646	
October 1-15	593,659	593,659	593,659		593,659	
October 16-31	606,914	606,914	606,914		606,914	
November 1-15	527,177	527,177	527,177		527,177	
November 16-30	497,540	497,540	497,540		497,540	
December 1-15	488,505	488,505	488,505		488,505	
December 16-31	538,463	538,463	538,463		538,463	

\*All milk of Noble's Milk Company sold to H. P. Hood & Sons, Inc.

234. During the first seven months of 1937, thirty-five hundred producers on the average delivered their milk continuously to the Hood and Noble Companies. This number represents about twenty percent of the total number of producers shipping milk into the Boston area.

*Bills and Statements Rendered to H. P. Hood & Sons, Inc.  
and Noble's Milk Company*

235. The Market Administrator computed and rendered bills to H. P. Hood & Sons, Inc. and to Noble's Milk Company for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to H. P. Hood & Sons, Inc. and to Noble's Milk Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. A copy of the bill rendered H. P. Hood & Sons, Inc. for the period August 1-15, 1937, and which in form is typical of all bills rendered by the Market Administrator to H. P. Hood & Sons, Inc. and to Noble's Milk Company is hereto annexed and marked Exhibit 19.

236. The defendants H. P. Hood & Sons, Inc. and Noble's Milk Company have not paid to the Market Administrator certain sums of money as charges "for producer settlement" so-called, which he has demanded of them under the provisions of Article VIII, Section 1, Paragraph 3 of the order as amended. The nature of these sums and the manner of their computation by the Market Administrator are described in detail in Paragraphs 119 to 142 hereof. With respect to the semi-monthly delivery periods between August 1, 1937, and December 31, 1937, the sums demanded of the Hood and Noble Companies by the Market Administrator purporting to act under Article VIII, Section 1, Paragraph 3 of the order were in the amounts set forth in the following tabulation:

**AUGUST-DECEMBER, 1937**  
**Producer Settlement Charges**  
**H. P. HOOD & SONS, INC.**  
**and**  
**NOBLE'S MILK COMPANY**

Delivery Period	Hood	Delivery Period	Noble
August 1-15	\$30,703.03	August 1-15	\$1,823.81
Adjustment	1,250.75 Credit	Adjustment	1,381.91
August 16-31	32,487.42	August 16-31	1,957.34
Adjustment	1,041.82	Adjustment	1,189.88
Adjustment	1,065.82 Credit	September 1-15	2,715.12
September 1-15	47,753.91	Adjustment	1,470.08
Adjustment	511.31	September 16-30	2,774.91
Adjustment	1,319.70 Credit	Adjustment	1,540.44
September 16-30	48,079.28	October 1-15	4,558.71
Adjustment	162.26	October 16-31	3,696.55
Adjustment	1,372.23 Credit	November 1-15	2,150.35
October 1-15	47,197.44	November 16-30	1,768.49
Adjustment	17.03	December 1-15	1,827.45
Adjustment	15.77 Credit	December 16-31	2,751.50
October 16-31	38,859.23		
Adjustment	16.06 Credit		
November 1-15	23,534.99		
November 16-30	18,973.53		
December 1-15	22,708.48		
December 16-31	29,902.06		
<b>TOTALS</b>	<b>\$341,931.79</b>		<b>\$31,606.54</b>
<b>Less Credits</b>	<b>5,040.33</b>		
	<b>\$336,891.46</b>		

237. The defendants H. P. Hood & Sons, Inc. and Noble's Milk Company have not paid to the Market Administrator other sums of money as charges for "marketing services" so-called which he has demanded of them under the provisions of Article IX, Section 1 of the order as amended. With respect to the semi-monthly delivery periods between August 1, 1937, and December 31, 1937, the sums demanded of the Hood and Noble Companies by

the Market Administrator purporting to act under the provisions of Article IX, Section 1 of the order were in the amounts set forth in the following tabulation:

**AUGUST-DECEMBER, 1937**  
**Marketing Service Charges**  
**H. P. Hood & Sons, Inc.**  
**and**  
**Noble's Milk Company**

Delivery Period	Hood	Delivery Period	Noble
August 1-15	\$1,900.13	August 1-15	\$117.14
August 16-31	1,980.67	August 16-31	120.93
September 1-15	1,905.22	September 1-15	113.37
September 16-30	1,900.75	September 16-30	114.33
October 1-15	1,836.46	October 1-15	118.73
October 16-31	1,734.83	October 16-31	121.38
November 1-15	1,442.34	November 1-15	105.44
November 16-30	1,402.10	November 16-30	99.51
December 1-15	1,416.50	December 1-15	97.70
December 16-31	1,554.94	December 16-31	107.69
	<b>\$17,073.94</b>		<b>\$1,116.22</b>

238. The sums claimed by the Market Administrator as coming due from these defendants under Article VIII, Section 1, Paragraph 3, and Article IX, Section 1 of the order, have been paid by the defendants into the registry of the district court pursuant to an Order of Supersedeas issued by a judge of the circuit court of appeals and continued in effect by the circuit court of appeals "pending the final determination on appeal of the several cases on their merits" (*H. P. Hood & Sons, Inc. et al. v. United States et al.*, 97 F. (2d) 677).

239. Pursuant to the order of the district court in these cases, dated November 30, 1937, the defendants H. P. Hood & Sons, Inc. and Noble's Milk Company have paid to the Market Administrator all sums demanded of them for "Market Administration" so-called under Article X, Section 1 of the order. The payment of sums to the Market

Administrator due or to become due under this article was excepted from the Order of Supersedeas issued by a judge of the circuit court of appeals and continued in effect by the circuit court of appeals "pending the final determination on appeal of the several cases on their merits" (*H. P. Hood & Sons, Inc. et al. v. United States et al.*, 97 F. (2d) 677). With respect to the semi-monthly delivery periods between August 1, 1937 and December 31, 1937, the sums demanded of the Hood and Noble Companies by the Market Administrator purporting to act under the provisions of Article X, Section 1 of the order and paid by these defendants to him in accordance with the order of the district court, were in the amounts set forth in the following tabulation:

**AUGUST-DECEMBER, 1937**  
**Market Administration Charges**  
**H. P. HOOD & SONS, INC.**  
**and**  
**NOBLE'S MILK COMPANY**

Delivery Period	Hood	Delivery Period	Noble
August 1-15	\$1,927.50	August 1-15	\$117.14
August 16-31	2,008.96	August 16-31	120.93
September 1-15	1,931.02	September 1-15	113.37
September 16-30	1,927.43	September 16-30	114.33
October 1-15	1,868.54	October 1-15	118.73
October 16-31	1,765.19	October 16-31	121.38
November 1-15	1,472.16	November 1-15	105.44
November 16-30	1,433.06	November 16-30	99.51
December 1-15	1,452.90	December 1-15	97.70
December 16-31	1,595.03	December 16-31	107.69
	<b><u>\$17,381.79</u></b>		<b><u>\$1,116.22</u></b>

*Other Proceedings*

240. On September 9, 1937, H. P. Hood & Sons, Inc. and Noble's Milk Company filed with the Secretary of Agriculture petitions in accordance with the provisions of Section 8 c (15) (A) and the appropriate rules and regulations issued by the Secretary, requesting that the Secretary determine that the "purported reinstatement" and amendment of Order No. 4 was not in accordance with law; that Order No. 4 as "purportedly reinstated" and amended did not tend to effectuate the purposes of the Act under which it was issued; these petitions also requested that Order No. 4 as "purportedly reinstated" and amended be terminated and that the operation of said order be suspended, pending an audit of the records of the Market Administrator, the elimination of milk not purportedly eligible for inclusion in the equalization pool, and the clarification of the situation in regard to those distributors in the marketing area who contend that they are not subject to the order. Hearings were held upon these petitions and evidence was adduced at said hearings. Up to the present time no decision has been rendered by the Secretary of Agriculture on these petitions.

241. On October 29, 1937, the defendant Noble's Milk Company filed in this court a Bill of Interpleader, Docket No. 4556, on the Equity Docket of this court, under the provisions of the Act of Congress of January 20, 1936, c. 3, s. 11: U.S.C. Title 28, Sec. 41 (25), making parties thereto the Market Administrator and producers of milk, who, it alleged, were all the producers from whom it purchased milk from August 1, 1937, to the date of the filing of the petition. In pursuance of said Bill of Interpleader, Noble's Milk Company has paid into the registry of the court all sums of money demanded of it by the Market Administrator under the provisions of Article IX, Section 1, and Article VIII, Section 1, Paragraph 3 of said Order No. 4 as amended, for the delivery periods August 1 through December 31, 1937.

*Hood and Noble Prices*

242. The Hood Company has openly and publicly posted on the receiving platform at each of its milk receiving stations plant notices at or before the beginning of each delivery period during the year 1937. All milk received by the Hood Company in such delivery periods during the year 1937 was received at these milk receiving stations after the posting of such notices and was delivered by the producers and received by the Hood Company under the terms of these notices. Copies of the plant notices for the year 1937 posted by the Hood Company are filed with this report marked Exhibit 20. The Hood Company paid its producers the amount of the posted prices from January 1, 1937, through July 31, 1937. From August 1 to December 31, 1937, the price paid by the Hood Company has been the announced blended price for non-members, that is, the blended price announced by the Market Administrator less a two cent deduction for marketing services pursuant to the provisions of Article IX of Order No. 4 as amended. Annexed hereto as Exhibit 21 is a tabulation showing for each delivery period from August 1 through December 31, 1937, the 20th zone blended price announced under Order No. 4 as amended, for non-members of cooperatives, the 20th zone blended price computed on the basis of the Hood plant notices and the difference between the announced 20th zone blended price for non-members of cooperatives under Order No. 4 as amended and the 20th zone blended price computed on the basis of the Hood plant notices.

243. Applying the differences between the announced zone blended prices to non-members and the zone prices computed on the basis of the plant notices, to the volume of milk received in each zone from producers by H. P. Hood & Sons, Inc. for each delivery period between August 1 and December 31, 1937, the following amounts of money are arrived at:

Aug. 1-15	\$32,599.55
Aug. 16-31	34,487.13
Sept. 1-15	49,628.29
Sept. 16-30	50,003.06
Oct. 1-15	50,393.92
Oct. 16-31	21,041.66
Nov. 1-15	8,085.98
Nov. 16-30	7,525.00
Dec. 1-15	8,937.76
Dec. 16-31	16,503.70
	<hr/>
	\$279,206.05

244. The Noble Company has openly and publicly posted on the receiving platform of its milk receiving station plant notices at or before the beginning of each delivery period during the year 1937. All milk received by the Noble Company at its country station in Shelburne Falls, Massachusetts, was received after the posting of such plant notices and was delivered by the producers and received by the Noble Company under the terms of these notices. Copies of the plant notices for the year 1937 posted by the Noble Company are filed with this report marked Exhibit 22. The Noble Company paid its producers the amount of the posted prices from January 1, 1937, through July 31, 1937. From August 1 to December 31, 1937, the price paid by the Noble Company has been the blended price announced by the Administrator for producers not members of a cooperative association in the 12th zone, that is, the announced blended price less two cents as provided in Article IX of Order No. 4 as amended for marketing services. Annexed hereto as Exhibit 23 is a tabulation showing for each delivery period from August 1 through December 31, 1937, the blended price for non-members in the 12th zone announced under Order No. 4 as amended, the prices computed on the basis of the Noble plant notices, and the difference between the announced blended price for non-members in the 12th zone and the prices computed on the basis of the Noble Company plant notices.

245. Applying the difference between the announced blended prices to non-members and the zone prices computed on the basis of the plant notices of the Noble Company, to the volume of milk received by the Noble Company for each delivery period between August 1 and December 31, 1937, the following amounts of money are arrived at:

Aug. 1-15	\$2,009.03
Aug. 16-31	2,158.53
Sept. 1-15	2,890.90
Sept. 16-30	2,943.98
Oct. 1-15	3,217.63
Oct. 16-31	1,511.22
Nov. 1-15	643.16
Nov. 16-30	587.10
Dec. 1-15	664.37
Dec. 16-31	1,200.77
	<u>\$17,826.69</u>

#### *The Intervenor*

246. In the case of *United States et al. v. H. P. Hood & Sons, Inc. et al.*, the petition of one E. Frank Branen to intervene was allowed by the court. E. Frank Branen is a producer of milk for the greater Boston marketing area living in Fairfield, Vermont. For about twenty-five years and throughout the year 1937 he has sold milk to H. P. Hood & Sons, Inc. at its milk receiving station at Fairfield, Vermont, which is located in the so-called 27th freight zone from Boston. He is one of a number of producers who have been delivering milk under the plant notices at the Fairfield plant. The price paid to Mr. Branen for milk in the 27th zone, by H. P. Hood & Sons, Inc. in any instance is \$.041 less than the price in the 20th zone. The Hood Company paid Mr. Branen the amount of the posted prices from January 1 through July 31, 1937, and, from August 1 through December 31, 1937, the applicable zone price announced by the Administrator. Attached hereto as Exhibit 24 is a tabu-

lation by delivery periods for the year 1937 showing for Mr. Branen the weight and test of the milk which he sold to the Hood Company and the prices paid therefor.

247. The following table shows for E. Frank Branen the amount by which the price for all milk delivered by him in each delivery period between August 1, 1937, and December 31, 1937, when computed on the basis of the prices contained in the posted plant notices exceeds the amount paid him on the basis of the Administrator's announced prices for such delivery periods:

Aug. 1-15	\$44.66
Aug. 16-31	42.83
Sept. 1-15	51.85
Sept. 16-30	48.01
Oct. 1-15	50.24
Oct. 16-31	20.49
Nov. 1-15	7.98
Nov. 16-30	7.50
Dec. 1-15	9.58
Dec. 16-31	17.26
	<u>\$300.40</u>

It appeared that originally petitions for intervention were filed by 65 producers of milk for the Greater Boston Marketing Area living in New England and who, throughout the year 1937, and for some time prior thereto, had sold milk to H. P. Hood & Sons, Inc., on behalf of themselves and all others who were similarly situated and might care to join, but the District Judge, in order to simplify the procedure, limited the intervention to one producer, E. Frank Branen, who, for the purposes of the case, would represent all Hood producers.

UNITED STATES ET AL. V. THE WHITING MILK COMPANY,  
No. 4520

*The Defendant*

248. The Whiting Milk Company, a Delaware corporation, defendant in No. 4520 Equity, is and has for a long time been in the business of receiving, buying, processing, selling, and distributing milk in the greater Boston marketing area. Its principal place of business is at 570 Rutherford Avenue in the Charlestown section of the city of Boston. Apart from the milk which it buys from other handlers, its milk is for the most part received from producers by it at country receiving stations owned and operated by it at North Walpole and Colebrook, New Hampshire; Randolph and Waterbury, Vermont; and Skowhegan, Harmony, and Newport, Maine. The operation of these country receiving stations is set forth more in detail in Paragraphs 250 to 255 of this report. The Whiting Company receives the balance of its milk from producers located in Middlesex and Worcester counties in the Commonwealth of Massachusetts as is more fully set forth in Paragraphs 256 to 257 of this report. The milk from the country receiving stations, as well as the Massachusetts milk, is ultimately sent to the Charlestown plant. From the Charlestown plant the Company sells the milk in the greater Boston marketing area and, to some extent, outside the area in secondary markets.

249. The Whiting Milk Company is the second largest distributor in the greater Boston marketing area. It buys from about 1,400 producers and, during the year 1937, handled 71,378,982 pounds of milk. During the period August 1 to December 31, 1937, it handled 8½% of the entire milk handled and reported to the Market Administrator under the order as amended, and it had 10½% of the fluid milk sales reported (as distinguished from sales of cream, condensed milk, etc.). A high percentage of the milk that it handles is sold as fluid milk as compared with the market as a whole.

250. The Whiting Milk Company since December 1, 1936, has been buying its milk from producers at prices and in the manner hereinafter described. It maintains country receiving stations at various points in Maine, New Hampshire, and Vermont at which the milk from the farms of the producers is received by the Whiting Company. These stations are owned and operated by the Whiting Company. The procedure is for the producers to bring in their milk in forty-quart cans. These are taken off the producers' trucks, the milk is tested, poured into a weigh tank where the milk received from each particular producer is weighed individually, and the weight is recorded. The cans are then washed and returned to the producer, and the producer then departs. The producers own the cans in most cases, but in some cases the Whiting Company owns them and charges the producer a small rental.

251. After the milk has been weighed, a sample is taken to determine the butterfat content, and the milk is then put into a large receiving tank, in which the milk of the several producers is mingled. From this tank the milk is pumped over the cooler. The cooler is a series of pipes through which a cooling medium is pumped, and over which the milk is allowed to trickle. From the cooler, the milk that is to be shipped as fluid milk is either put in forty-quart cans and loaded onto a freight car or is pumped directly into a tank car and is forwarded to the plant of the company at Charlestown (Boston), Massachusetts.

252. At two of the Whiting receiving stations, Newport, Maine, and Colebrook, New Hampshire, there is further processing. The milk which is not needed at Boston in the form of fluid milk instead of being put in cans for shipment is run from the receiving tank to a separator, which is a large revolving affair that separates the cream from the skim milk. The cream is piped into holding vats where it is heated and pasteurized. It is then run over a tubular cooler and from there put into cans for shipment. The skim milk, unless needed as such in Boston for buttermilk,

is piped from the separator to a dryer, which is a machine that has two rotating drums which are superheated. As the skim milk passes over these, the water is evaporated and the skim milk powder is scraped off by knives. This powder is then put into barrels. In some cases instead of making skim milk powder only a portion of the water is evaporated and the resulting product is condensed skim milk. The process for this is to heat the skim milk in a "hot well" which is a stainless steel or tin coppered tank. After a certain amount of heating it is piped into a vacuum pan in which the excess moisture is driven from the milk. The manufactured products of the Colebrook and Newport stations were ultimately shipped to Boston.

253. Approximately one-third of the milk handled at Newport as described above was milk originally received by the Whiting Milk Company at its receiving stations at Skowhegan, Maine, and Harmony, Maine, from producers delivering to those stations. At these two stations after the milk is received, weighed, sampled, and cooled, it is transshipped by the Whiting Company, wholly within the State of Maine, to Newport, Maine, where it is then mingled and processed with the milk received at Newport.

254. The extent to which the milk at Newport and Colebrook is separated and manufactured is regulated each day from the Boston office of the Whiting Company. The production manager determines the amount of milk he needs for his fluid requirements, which varies from day to day. Knowing the approximate receipts at the other stations, he can thus determine how much is to be shipped to Boston in fluid form from Newport and Colebrook and how much is to be separated at those stations.

255. During the year 1937 approximately 31,600,000 pounds of milk were handled by the Whiting Milk Company at Newport, of which approximately 62% was shipped to Boston as fluid milk and approximately 38% was further processed as above described. The manufacturing of milk at Colebrook was only an occasional matter. All of the milk from both stations was included by the Market Administrator in the computation of the blended price for the two

delivery periods in August and in preparing all of the bills to the Whiting Milk Company.

256. The Whiting Company purchases a certain amount of milk in Middlesex and Worcester counties, Massachusetts, which is trucked to its plant at Charlestown, Massachusetts, never leaving the Commonwealth of Massachusetts at any time. After weighing, pasteurizing, and bottling the same at Charlestown, it is sold and consumed locally in Massachusetts. The Whiting Company has contracts with certain public institutions which specify Massachusetts milk and which require approximately 233,000 pounds of milk each month. All Massachusetts milk is received at the Charlestown plant at different hours from the milk from northern New England, and when received is put through the weighing, pasteurizing, and bottling machinery as one unit, the out-of-state milk being held up during the process if necessary. It is, however, handled in the same machines and by the same employees as those that handle the out-of-state milk and the surplus Massachusetts milk not needed for institutional sale is thereafter handled in the same manner as the out-of-state milk without any attempt to segregate the two if they happen to be going through the plant at the same time.

257. An average of about 440,000 pounds per month is received from approximately seventy Massachusetts producers by the Whiting Milk Company and is handled solely within the Commonwealth of Massachusetts from the point of production to the point of consumption, this being about 7.5% of the total amount of milk handled by the Whiting Milk Company. The Whiting Milk Company notified the Market Administrator at the time that the first report was made to him that the figures in the report included this Massachusetts milk. The entire receipts of milk as reported by the company were included in computing the blended price each period in August and the entire receipts as reported have been included in computing each of the bills rendered to the Whiting Company for August and subsequent periods.

258. The following table shows the amounts of milk purchased by the Whiting Milk Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

**WHITING MILK COMPANY**  
**RECEIPTS OF MILK (in pounds)**

Period	From Producers	From Other Handlers	Total
August 1-15	3,540,010	1,374,599	4,914,609
August 16-31	3,698,868	1,533,447	5,232,315
September 1-15	3,445,444	1,054,507	4,499,951
September 16-30	3,348,388	906,594	4,254,982
October 1-15	3,290,841	1,039,060	4,329,901
October 16-31	3,208,275	1,186,314	4,394,589
November 1-15	2,715,246	1,291,130	4,006,376
November 16-30	2,683,937	1,269,730	3,953,667
December 1-15	2,754,390	1,113,216	3,867,606
December 16-31	3,023,821	870,173	3,893,994

**DISPOSITION OF MILK (in pounds)**

Period	Sold for Class I Purposes			Percent is of All Milk	Sold for Class II Purposes In and Outside Marketing Area
	Inside Marketing Area	Outside Marketing Area	Total		
Aug. 1-15	3,585,082	402,607	3,987,689	19	926,920
Aug. 16-31	3,785,516	395,106	4,180,622	20	1,051,693
Sept. 1-15	3,441,882	217,013	3,658,895	19	841,056
Sept. 16-30	3,523,834	97,401	3,621,235	15	633,747
Oct. 1-15	3,581,323	41,726	3,623,049	16	706,852
Oct. 16-31	3,762,188	41,983	3,804,171	13	590,418
Nov. 1-15	3,451,913	34,956	3,486,869	13	519,507
Nov. 16-30	3,389,108	37,232	3,426,340	13	527,327
Dec. 1-15	3,345,704	34,153	3,379,857	13	487,749
Dec. 16-31	3,386,488	32,662	3,419,150	12	474,844

259. The Whiting Company from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside the Commonwealth of Massachusetts and transported into the marketing area. The milk which the Whiting Company so purchased from other handlers was bought on the basis of a stipulated quantity per day and was all used as Class I milk. The following table shows for each delivery period between August 1, 1937, and December 31, 1937, the amount of such milk so purchased by the Whiting Company from other handlers in the market and the name of the handlers from whom it was purchased:

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Period		Handlers from Whom Purchased	Pounds of Milk
August	1-15	Bellows Falls Cooperative Creamery	702,309
		Manchester Dairy System	107,857
		United Farmers Cooperative Creamery Ass'n.	564,433
August	16-31	Bellows Falls Cooperative Creamery	729,014
		Manchester Dairy System	124,496
		United Farmers Cooperative Creamery Ass'n.	604,133
		Milton Cooperative Creamery	72,928
September	1-15	D. Whiting & Sons	2,876
		Bellows Falls Cooperative Creamery	392,422
		Manchester Dairy System	111,669
		United Farmers Cooperative Creamery Ass'n.	541,858
September	16-30	D. Whiting & Sons	8,558
		Bellows Falls Cooperative Creamery	322,550
		Manchester Dairy System	108,698
		United Farmers Cooperative Creamery Ass'n.	460,655
October	1-15	D. Whiting & Sons	14,693
		Bellows Falls Cooperative Creamery	384,684
		Manchester Dairy System	105,411
		United Farmers Cooperative Creamery Ass'n.	532,564
October	16-31	D. Whiting & Sons	16,401
		Bellows Falls Cooperative Creamery	491,476
		Manchester Dairy System	117,255
		United Farmers Cooperative Creamery Ass'n.	564,769
November	1-15	D. Whiting & Sons	12,814
		Bellows Falls Cooperative Creamery	572,160
		Manchester Dairy System	108,874
		Milton Cooperative Creamery	34,400
November	16-30	United Farmers Cooperative Creamery Ass'n.	562,750
		D. Whiting & Sons	12,946
		Bellows Falls Cooperative Creamery	656,357
		Manchester Dairy System	103,200
December	1-15	United Farmers Cooperative Creamery Ass'n.	496,281
		D. Whiting & Sons	13,892
		Bellows Falls Cooperative Creamery	493,685
		Manchester Dairy System	103,200
December	16-31	United Farmers Cooperative Creamery Ass'n.	503,280
		D. Whiting & Sons	13,051
		Bellows Falls Cooperative Creamery	155,837
		Manchester Dairy System	112,634
		United Farmers Cooperative Creamery Ass'n.	588,496
		D. Whiting & Sons	13,206

*Bills and Statements Rendered to the Whiting Milk Company*

260. The Market Administrator computed and rendered a bill to the Whiting Company for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to the Whiting Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. A copy of the bill rendered the Whiting Milk Company for the period October 1-15, 1937, and which in form is typical of all bills rendered by the Administrator to the Whiting Milk Company is hereto annexed and marked Exhibit 25.

*The Whiting Company Prices*

261. The Whiting Company has openly and publicly posted, on the receiving platform at each of its milk receiving stations, plant notices at or before the beginning of each delivery period during the year 1937. The notices were also mailed to each producer who had delivered milk to the Whiting Company during the preceding month. All milk received by the Whiting Company in such delivery periods was received at these milk receiving stations after the posting of such notices and was delivered by the producers and received by the Whiting Company under the terms of these notices. Copies of the plant notices for the year 1937 posted by the Whiting Company are filed with this report and marked Exhibit 26. The Whiting Company paid its producers the amount of the posted prices from January 1, 1937, through July 31, 1937. From August 1, 1937, to December 31, 1937, the price paid by the Whiting Company has been the announced blended price for non-members, that is, the blended price announced by the Market Administrator less a two-cent deduction for mar-

keting services pursuant to the provisions of Article IX of Order No. 4 as ~~amended~~. Annexed hereto as Exhibit 27 is a tabulation showing for each delivery period between August 1 and December 31, 1937, the twenty-second zone blended price announced under Order No. 4 as amended for non-members of cooperatives after deducting the two-cent charge for marketing services, the twenty-second zone blended price as stated in the Whiting Company plant notices, and the difference between the two.

262. The total amount paid into court by the Whiting Company for the period August 1, 1937, to February 28, 1938, inclusive, was \$168,487.58. The total amount that has been paid to its producers at the Administrator's announced prices for the same period is \$920,288.63. If the Whiting Company had paid its producers on the basis of the prices contained in its plant notices, the total would have been \$1,002,126.90, or \$81,838.27 more than actually was paid. In addition, the Whiting Company has paid the Market Administrator \$8,635.95 in said period for the Administrator's charges under Article X of the order.

263. Upon the filing of the bills of complaint in these cases, a preliminary mandatory injunction directing the defendants to comply with the order of the Secretary was sought by the plaintiffs. Such an injunction was granted by the district court (*United States et al. v. Whiting Milk Company*, 21 F. Supp. 321), which was superseded by order of a judge of the circuit court of appeals conditioned on payment into court of the so-called "producer settlement" and "marketing services" charges called for by the order of the Secretary, and payment to an individual known as the Market Administrator of the so-called "administration charges" under said order. This order of supersedeas has been continued by the circuit court of appeals "pending the final determination on appeal of the several cases on their merits" (*H. P. Hood & Sons, Inc. v. United States et al.*, 97 F. (2d) 677).

264. Pursuant to the order of supersedeas the defendant Whiting Milk Company has paid into the registry of the

court for the period August 1, 1937, to March 31, 1938, the following sums representing charges against it for the "producer settlement" account and for "marketing services", as computed by the Market Administrator purporting to act under Article VIII, Section 1, Paragraph 3 and Article IX, Section 1 of the order and has paid to the Market Administrator for the same period the following amounts as charges for "administration" expense under the provisions of Article X, Section 1 of the order:

## WHITING MILK COMPANY

Period	Producer Settlement and Marketing Services Charges	Adminis- tration Charges
1937		
August 1-15	\$8,795.34	\$708.00
August 16-31	8,109.04	739.77
September 1-15	16,833.06	689.09
September 16-30	18,825.49	670.28
October 1-15	17,583.62	658.17
October 16-31	13,138.86	641.66
November 1-15	6,034.40	543.05
November 16-30	5,085.41	536.79
December 1-15	6,335.59	550.88
December 16-31	10,725.51	604.76
1938		
January 1-15	12,532.64	577.40
January 16-31	14,252.26	621.49
February 1-15	15,145.79	584.97
February 16-28	15,090.57	509.64
March 1-15	18,412.15	598.77
March 16-31	23,397.16	673.89
Totals	\$210,296.89	\$9,908.61

The amount of the charges for marketing services was the same in each delivery period as the amount of administration charges.

*Other Proceedings*

265. On September 9, 1937, the defendant Whiting Milk Company filed a written petition with the Secretary of Agriculture pursuant to Section 8c (15) of said Agricultural Marketing Agreement Act of 1937, stating that the order was not in accordance with law and that the Act was contrary to the provisions of the Constitution of the United States and praying that they be granted a hearing, and that after the hearing the order be vacated or modified. Hearings were held before officials designated by the Secretary of Agriculture beginning September 22 and continuing through October 4, 1937; but before these hearings were concluded the present suits were brought by the United States and the Secretary. No decision has yet been made on the said petition.

*The Intervenor*

266. In the case of *United States et al. v. Whiting Milk Company* the petition of one Chester Noyes to intervene was allowed by the court. Chester Noyes is a producer of milk for the greater Boston marketing area living in Stewartstown, New Hampshire. For about nine years and throughout the year 1937 he sold milk to the Whiting Milk Company at its receiving station at Colebrook, New Hampshire, which is in the so-called "twenty-fifth" freight zone from Boston. He is one of about 120 producers who have been delivering milk under the plant notices at the Colebrook plant. The Whiting Milk Company paid Mr. Noyes the amount of the posted prices from January 1, 1937, through July 31, 1937, and from August 1 through December 31, 1937, the applicable zone price announced by the Administrator. The following tabulation shows by delivery periods from August 1, 1937, to December 31, 1937, the weight and test of the milk which Mr. Noyes sold to the Whiting Company and the prices paid therefor:

Chester Noyes  
in account with  
WHITING MILK COMPANY

Period Received		Pounds of Milk Delivered	Butterfat Test of Milk Delivered	Prices Paid for Milk of Test Delivered
August	1-15	4030	3.9	2.133
August	16-31	3709	3.8	2.123
September	1-15	3675	4.0	2.12
September	16-30	4013	4.0	2.123
October	1-15	3407	4.0	2.12
October	16-31	3844	4.2	2.205
November	1-15	3849	4.0	2.323
November	16-30	4332	4.2	2.478
December	1-15	4404	4.0	2.373
December	16-31	4963	4.0	2.227

267. The price for all milk delivered by Chester Noyes in the delivery periods between August 1 and December 31, 1937, if computed on the basis of the prices contained in the posted plant notices would exceed the amount paid him on the basis of the Administrator's announced prices for such delivery periods by \$129.64.

268. It appeared that originally the petition for intervention was filed by three producers on behalf of themselves and all others who were similarly situated and might care to join, but the District Judge in order to simplify the procedure limited the intervention to one producer who, for the purposes of the case, would represent all Whiting producers.

269. For the period August 1 to December 31, 1937, inclusive the price for all milk delivered by all Whiting producers if computed on the basis of the prices contained in

the posted plant notices would exceed the amount paid them on the basis of the Administrator's announced prices for such delivery period by \$52,564.69. If the blended prices should be recomputed so as to include in the computation the milk of handlers who were previously excluded because they had not made certain payments, as set forth in paragraph 146 of my consolidated report (and see also paragraphs 144 and 148), the total amount due all Whiting producers for all milk delivered by them for the period August 1, 1937 to December 31, 1937, inclusive will exceed the amount actually paid them by about \$27,000; and in such an event the amount which the Whiting Company should pay the Market Administrator would be about \$27,000 less than the amount originally billed to that company and paid by it into Court.

UNITED STATES ET AL. V. A. J. ROBINSON, No. 4530.

*The Defendant*

270. The defendant A. J. Robinson, doing business under the trade name of Mountain View Creamery and under the trade name of A. J. Robinson & Son, is a citizen of the Commonwealth of Massachusetts, resides in Roslindale, in the city of Boston therein, and has his principal place of business at 172 Kittredge Street in said city and Commonwealth.

271. A. J. Robinson is a handler of milk as defined in the order and is engaged in the business of receiving, buying, processing, selling, and distributing milk.

272. The defendant A. J. Robinson, doing business under the name of Mountain View Creamery, receives milk from producers at his plant in Starksboro, Vermont. In each of the delivery periods between August 1, 1937, and December 31, 1937, the defendant A. J. Robinson received milk from approximately 100 producers at his Starksboro, Vermont, plant. All of the milk received by A. J. Robinson from producers at Starksboro, Vermont was subsequently distributed and sold in the marketing area.

273. The following table shows the amount of milk received by A. J. Robinson from producers in each delivery period between August 1, 1937, and December 31, 1937, and the eventual disposition which was made of the milk:

**MOUNTAIN VIEW CREAMERY**

RECEIPTS OF MILK (in pounds)			DISPOSITION OF MILK (in pounds)		
Period	From Producers	Total	Sold for Class I Purposes in and Outside Marketing Area*	Sold for Class II Purposes in and Outside Marketing Area	
August 1-15	278,113	278,113	261,460	16,653	
August 16-31	277,964	277,964	248,540	29,424	
September 1-15	262,001	262,001	215,305	46,696	
September 16-30	256,589	256,589	222,360	34,229	
October 1-15	261,537	261,537	226,015	35,522	
October 16-31	257,174	257,174	220,320	36,854	
November 1-15	221,323	221,323	187,000	34,323	
November 16-30	218,245	218,245	183,345	34,900	
December 1-15	225,164	225,164	196,350	28,814	
December 16-31	244,466	244,466	215,815	28,651	

\*All reported inside marketing area.

**Failure to Report**

274. On November 30, 1937, the Market Administrator had received no report from the defendant A. J. Robinson, doing business as Mountain View Creamery, for the delivery periods October 1-15, 1937, and October 16-31, 1937.

**Bills and Statements Rendered to A. J. Robinson**

275. The Market Administrator computed and rendered a bill to A. J. Robinson for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to A. J. Robinson were

computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended if it be held that A. J. Robinson is subject to the order. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. A copy of the bill rendered A. J. Robinson for the period October 1-15, 1937, and which in form is typical of all bills rendered by the Administrator to A. J. Robinson, is hereto annexed and marked Exhibit 28.

276. The following table shows the amounts for which bills and statements were rendered to A. J. Robinson for each delivery period between August 1, 1937, and December 31, 1937.

Amounts of Billings to the Mountain View Creamery for Producer Settlement, Marketing Services, and Market Administration by periods from August 1, 1937, to and including December 31, 1937  
(Exhibits 134A-J).

Period	Producer Settlement	Market Services	Market Administration
August 1-15	\$1,428.35	\$55.62	\$55.62
August 16-31	1,227.40	55.59	55.59
September 1-15	1,524.05	52.40	52.40
September 16-30	1,646.93	51.32	51.32
October 1-15	1,688.85	52.31	52.31
October 16-31	1,260.99	51.43	51.43
November 1-15	616.90	44.26	44.26
November 16-30	515.75	43.65	43.65
December 1-15	609.94	45.03	45.03
December 16-31	979.67	48.89	48.89

277. As of January 26, 1938, the defendant A. J. Robinson, doing business as Mountain View Creamery, had paid the following amounts in liquidation of the market administration charges billed to him for the delivery periods August 1 to December 31, 1937:

August	1-15	\$55.62
August	16-31	55.59
September	1-15	52.40
September	16-30	51.32
October	1-15	52.31
October	16-31	51.43
November	1-15	44.26
November	16-30	43.65
December	1-15	
December	16-31	

278. As of January 26, 1938, the defendant A. J. Robinson, doing business as Mountain View Creamery, had paid nothing in liquidation of the bills and statements rendered to him by the Market Administrator for the delivery periods August 1 to December 31, 1937, except as shown by the table set forth in Finding 277 *supra*. As of March 31, 1938, bills had been rendered by the Market Administrator to the defendant A. J. Robinson for amounts alleged to be due under the provisions of Article VIII, Section 1, Paragraph 3, and Article IX, Section 1 of the order in the sum of \$20,793.43 and of this total the defendant had paid \$13,123.04 into the registry of the court.

UNITED STATES ET AL. V. WESTWOOD FARM MILK COMPANY,  
No. 4544

*The Defendant*

279. The defendant Westwood Farm Milk Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 11 Ballard Street, Jamaica Plain, in the city of Boston in said Commonwealth.

280. The Westwood Farm Milk Company is engaged in the business of receiving, buying, processing, selling, and distributing milk and is a handler of milk in the marketing area. The defendant corporation receives milk from producers located in the state of Vermont; the milk is transported in interstate commerce to the distributing plant of the defendant corporation in Boston, Massachusetts, and

there processed and then distributed and sold by the defendant corporation in the marketing area. In each delivery period between August 1, 1937, and December 31, 1937, all of the producers from whom the Westwood Farm Milk Company received milk resided in the state of Vermont.

281. If Exhibits 100A-J are properly in evidence, the following table shows the amount of milk received by the Westwood Farm Milk Company from producers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk.

#### WESTWOOD FARM MILK COMPANY

Period	RECEIPTS OF MILK (in pounds)		Total	DISPOSITION OF MILK (in pounds)	
	From Producers	From Other Handlers		Sold for Class I Purposes in and Outside Marketing Area*	Sold for Class II Purposes in and Outside Marketing Area
August 1-15	70,119		70,119	68,376	1,743
August 16-31	73,816		73,816	72,340	1,476
September 1-15	68,423	1,530	69,953	65,582	4,371
September 16-30	68,695	1,700	70,395	67,652	2,743
October 1-15	69,617	850	70,467	64,575	5,892
October 16-31	69,643		69,643	68,170	3,473
November 1-15	59,270	8,500	67,770	62,808	4,962
November 16-30	60,556	5,100	65,656	60,896	4,760
December 1-15	60,126	3,400	63,526	62,271	1,255
December 16-31	65,153	2,550	67,703	65,153	2,550

\*All reported inside marketing area.

#### *Bills and Statements Rendered to The Westwood Farm Milk Company*

282. The Market Administrator computed and rendered a bill to the Westwood Farm Milk Company for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to the

Westwood Farm Milk Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to the Westwood Farm Milk Company were similar in form to the bill which was rendered A. J. Robinson for the delivery period October 1-15, 1937, and which is annexed to this report as Exhibit 28.

283. The following table shows the amounts for which the bills and statements were rendered to Westwood Farm Milk Company for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings to Westwood Farm Milk Company for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and including December 31, 1937.

Period		Producer Settlement	Marketing Services	Market Administration
August	1-15	\$364.52	\$14.02	\$14.02
August	16-31	367.68	14.76	14.76
September	1-15	461.17	13.68	13.68
September	16-30	491.52	13.74	13.74
October	1-15	473.49	13.92	13.92
October	16-31	387.66	13.93	13.93
November	1-15	195.27	11.85	11.85
November	16-30	174.70	12.11	12.11
December	1-15	214.40	12.03	12.03
December	16-31	308.83	13.03	13.03

284. As of January 26, 1938, the defendant Westwood Farm Milk Company had paid to the Market Administrator the following amounts in liquidation of the market administration charges billed to it for the delivery periods August 1 to December 31, 1937:

August	1-15	\$14.02
August	16-31	14.76
September	1-15	13.68
September	16-30	13.74
October	1-15	13.92
October	16-31	13.93
November	1-15	11.85
November	16-30	12.11
December	1-15	
December	16-31	

285. As of January 26, 1938, the defendant Westwood Farm Milk Company had paid nothing to the Market Administrator in liquidation of the bills and statements rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937, except as shown in the table set forth in Finding 284 *supra*. As of March 31, 1938, bills had been rendered by the Market Administrator to the Westwood Farm Milk Company for amounts alleged to be due under Article VIII, Section 1, Paragraph 3 and Article IX, Section 1 of the order in the sum of \$6,213.78 and of that total the defendant Westwood Farm Milk Company had paid \$3,955.55 into the registry of the court.

UNITED STATES ET AL. v. WM. T. JONES COMPANY, No. 4543

*The Defendant*

286. The defendant Wm. T. Jones Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 5 Wesley Street in the city of Chelsea in the Commonwealth of Massachusetts.

287. The Wm. T. Jones Company is engaged in the business of receiving, buying, processing, selling, and distributing milk, and is a handler of milk as defined in the order.

288. The Wm. T. Jones Company purchases or otherwise receives milk from producers located in the states of Maine and New Hampshire. The milk is transported in interstate commerce to its distributing plant in Chelsea,

Massachusetts, where it is processed and then distributed and sold by the Wm. T. Jones Company in the marketing area. In the delivery period August 1 to August 15, 1937, the Wm. T. Jones Company received milk from approximately 16 producers whose farms were located in the State of Maine and from approximately 19 producers whose farms were located in the State of New Hampshire.

289. The Wm. T. Jones Company from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area.

290. The following table shows the amount of milk received by the Wm. T. Jones Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

#### WM. T. JONES COMPANY

##### RECEIPTS OF MILK (in pounds)

##### DISPOSITION OF MILK (in pounds)

Period	From produc- ers	From other hand- lers	Total	Sold for Class I Purposes		Total Class I	Sold for Class II purposes in and outside marketing area
				Inside Market- ing area	Outside Market- ing area		
August 1-15	50,015	26,945	76,960	72,166	1,870	74,036	2,924
August 16-31	65,959	30,090	96,049	90,318	850	91,168	4,881
September 1-15	92,243	10,440	102,683	87,133	6,278	93,411	9,272
September 16-30	89,846	6,630	96,476	90,629	6,278	90,629	5,847
October 1-15	90,964	7,565	88,529	82,443	6,086	82,443	6,086
October 16-31	14,427	17,595	92,022	84,314	7,708	84,314	7,708
November 1-15	58,413	29,237	87,650	78,681	8,969	78,681	8,969
November 16-30	57,348	27,685	85,033	77,999	7,034	77,999	7,034
December 1-15	93,577		93,577	80,030	13,547	80,030	13,547
December 16-31	102,075		102,075	76,547	25,526	76,547	25,526

#### Bills and Statements Rendered to the Wm. T. Jones Company

291. The Market Administrator computed and rendered a bill to the Wm. T. Jones Company for each of the delivery periods between August 1 and December 31, 1937. It is

agreed by the parties that the amounts billed to the Wm. T. Jones Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to the Wm. T. Jones Company were similar in form to the bill rendered A. J. Robinson for the delivery period October 1 to 15, 1937, which is attached to this report as Exhibit 28.

292. The following table shows the amounts for which bills and statements were rendered to the Wm. T. Jones Company for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings and Adjustments in Billings to the Wm. T. Jones Company for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31, 1937.

		Producer Original	Settlement Adjustment	Marketing Services	Market Adminis- tration
August	1-15	\$183.99		\$10.00	\$10.00
August	16-31	236.34		13.19	13.19
September	1-15	509.04		18.45	18.45
September	16-30	574.68	\$1.49 (Cr.)	17.97	17.97
October	1-15	523.61		16.19	16.19
October	16-31	341.10		14.89	14.89
November	1-15	115.91		11.68	11.68
November	16-30	108.74		11.47	11.47
December	1-15	120.08		18.72	18.72
December	16-31	139.59		20.42	20.42

293. As of January 26, 1938, the defendant Wm. T. Jones Company had paid the following amounts in liquidation of the market administration charges billed to it for the delivery periods August 1 to December 31, 1937:

August	1-15	\$10.00
August	16-31	13.19
September	1-15	18.45
September	16-30	17.97
October	1-15	16.19
October	16-31	14.89
November	1-15	11.68
November	16-30	11.47
December	1-15	18.72
December	16-31	

294. As of January 26, 1938, the defendant Wm. T. Jones Company had paid nothing in liquidation of the bills and statements rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937; except as shown in the table set forth in Finding 293, *supra*. As of March 31, 1938, bills had been rendered by the Market Administrator to the Wm. T. Jones Company for amounts alleged to be due under the provisions of Article VIII, Section 1, paragraph 3, and Article IX, Section 1 of the order, in the sum of \$5,099.14 and of this total the defendant Wm. T. Jones Company had paid \$4,720.11 into the registry of the court.

UNITED STATES ET AL. v. GREEN VALLEY CREAMERY, INC.  
No. 4522

*The Defendant*

295. The defendant Green Valley Creamery, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 40 Lake Street, in the city of Somerville in said Commonwealth.

296. Green Valley Creamery, Inc. was organized in October, 1934, and within a month or six weeks thereafter purchased the plant it now operates at Passumpsic, Vermont. From the time that Green Valley Creamery, Inc. purchased the plant at Passumpsic, Vermont, to date the officers of Green Valley Creamery, Inc. have been Otis H. Parker, president; Howard B. Parker, treasurer; and Alfred E. Collinson, secretary. During this same period the aforesaid Otis H. Parker, Howard B. Parker, and Alfred E. Collinson have been the directors of Green Valley Creamery, Inc. No stock book is kept for Green Valley Creamery, Inc. At the present time there are outstanding 100 shares of stock in Green Valley Creamery, Inc., all of which are owned by the treasurer, Howard B. Parker. The president of Green Valley Creamery, Inc., Otis H. Parker, is the brother of Howard B. Parker.

297. Green Valley Creamery, Inc., is a handler of milk as defined in the order and is engaged in the business of receiving, buying, processing, selling and distributing milk.

298. Green Valley Creamery, Inc., purchases milk from producers located in the State of Vermont. The said milk is sold to other handlers and transported in interstate commerce into the marketing area and such other handlers process, distribute, and sell the milk in the Boston area.

299. In each delivery period between August 1, 1937, and December 31, 1937, Green Valley Creamery, Inc., sold all of the milk which it received from producers to the Stuart Milk Company. The Stuart Milk Company, a Massachusetts corporation, operates a city plant at 40 Lake Street, Somerville, Massachusetts. The following table shows the amounts of milk received from producers by Green Valley Creamery, Inc., and its disposition in each delivery period between August 1, and December 31, 1937.

## GREEN VALLEY CREAMERY, INC.

Period	RECEIPTS OF MILK (in pounds)		DISPOSITION OF MILK (in pounds)	
	From Producers	Total	Sold for Class I purposes in and outside marketing area	Sold for Class II purposes in and outside marketing area
August 1-15	112,264	112,264	111,945	319
August 16-31	118,298	118,298	117,640	658
September 1-15	118,134	118,134	117,326	808
September 16-30	122,182	122,182	122,017	165
October 1-15	113,810	113,810	113,716	94
October 16-31	112,414	112,414	111,818	596
November 1-15	78,369	78,369	77,839	530
November 16-30	92,577	92,577	92,234	343
December 1-15	93,849	93,849	89,020	4,829
December 16-31	101,794	101,794	99,053	2,741

300. Since 1930 Arthur B. Parker has been the president of Stuart Milk Company and Howard B. Parker has been the treasurer of Stuart Milk Company. Since January 1938, Alfred E. Collinson has been the clerk of Stuart Milk Company. These same three men are the directors of Stuart Milk Company. There are 500 shares of stock in the Stuart Milk Company, over 200 of which are owned by Howard B. Parker and the remainder are owned by his father, Arthur B. Parker.

301. The buildings at 40 Lake Street, Somerville, Massachusetts, which is the address of the plant of Stuart Milk Company and of the principal place of business in Massachusetts of Green Valley Creamery, Inc., are owned by the Dairy Realty Company. The Stuart Milk Company owns the equipment, fixtures, and furniture in those buildings. Green Valley Creamery, Inc., owns nothing at 40 Lake Street, Somerville, Massachusetts, except its books of account. Green Valley Creamery, Inc., does not rent office space from the Stuart Milk Company. The same book-

keeper keeps the books of Stuart Milk Company and Green Valley Creamery, Inc. All checks of Green Valley Creamery, Inc., are drawn by Howard B. Parker at the office at 40 Lake Street, Somerville, Massachusetts.

302. Prior to February 4, 1937, the Stuart Milk Company was known as the W. E. Stuart Company. The W. E. Stuart Company owned the plant at Passumpsic, Vermont, prior to its sale to Green Valley Creamery, Inc. From 1930 to 1932 the W. E. Stuart Company bought milk from producers at the plant at Passumpsic, Vermont. From 1932 until some time in 1934 the plant was closed. In 1934 Green Valley Creamery, Inc., purchased the plant at Passumpsic, Vermont, from the Stuart Milk Company for an unknown amount of cash and a \$9,000.00 mortgage. The mortgage was subsequently foreclosed early in 1938. At the present time the plant at Passumpsic, Vermont, is owned by Stuart Milk Company and is operated by Green Valley Creamery, Inc. There is no written contract or lease between Green Valley Creamery, Inc. and the Stuart Milk Company. The agreement by which the Green Valley Creamery, Inc. operates the Passumpsic plant which belongs to the Stuart Milk Company was made by discussion between Otis H. Parker, Howard B. Parker, and Alfred E. Collinson some time subsequent to January 20, 1938. The agreement was not approved at any meeting of the boards of directors of either company.

303. Howard B. Parker as general manager and treasurer of Green Valley Creamery, Inc. supervises the purchases and sales of milk by that company. He has general supervision of the making of any contracts with other handlers for the purchase and sale of milk. The same Howard B. Parker as treasurer and general manager of Green Valley Creamery, Inc. has general supervision of the making of contracts for the purchase and sale of milk on behalf of the Stuart Milk Company.

304. Between August 1 and December 31, 1937, there was no written contract or oral agreement between Green Valley Creamery, Inc. and Stuart Milk Company for the

sale of milk. Howard B. Parker testified that the Stuart Milk Company purchased milk from Green Valley Creamery, Inc. on the basis of what it believed to be a fair value for the product, taking into consideration the elements which enter into that determination.

305. Howard B. Parker as general manager of Green Valley Creamery, Inc. determined at what price Green Valley Creamery, Inc. would sell milk to Stuart Milk Company in the delivery period August 1-15, 1937, and as general manager of Stuart Milk Company determined whether or not Stuart Milk Company would pay that price. The price which Stuart Milk Company was to pay Green Valley Creamery, Inc. was determined after the end of the delivery period in which the milk was delivered.

306. The milk which is purchased from Green Valley Creamery, Inc. by Stuart Milk Company is transported in jugs by motor vehicle from the plant at Passumpsic, Vermont, to the plant of Stuart Milk Company in Somerville, Massachusetts. The Stuart Milk Company own the jugs, and they bear the name of either the Stuart Milk Company or the W. E. Stuart Company. None of the jugs are owned by Green Valley Creamery, Inc. When the milk is shipped to the Stuart Milk Company there is a tag placed on the jug notifying the truck company that when the jug is empty it is to be returned to Green Valley Creamery, Inc. at Passumpsic, Vermont.

307. There is an arrangement between Stuart Milk Company and Green Valley Creamery, Inc. whereby Stuart Milk Company, so far as it can, buys all of the milk which it requires through Green Valley Creamery, Inc.

308. During the year 1937 the defendant Green Valley Creamery, Inc. received all of the milk which it purchased from producers at the plant in Passumpsic, Vermont, which is in the 19th zone, and the milk was shipped to Boston in less than carload lots. For each delivery period in 1937 Green Valley Creamery, Inc. paid to its producers the following prices per hundredweight for 3.7 milk:

January	1-15	\$2.14
"	16-31	2.14
February	1-15	2.11
"	16-28	2.08
March	1-15	2.01
"	16-31	1.92
April	1-15	1.84
"	16-30	1.74
May	1-15	1.72
"	16-31	1.72
June	1-15	1.72
"	16-30	1.70
July	1-15	1.97
"	16-31	2.07
August	1-15	2.002
"	16-31	2.03
September	1-15	2.041
"	16-30	2.024
October	1-15	2.011
"	16-31	2.142
November	1-15	2.25
"	16-30	2.30
December	1-15	2.264
"	16-31	2.127

### *Failure to Report*

309. As of November 30, 1937, the defendant Green Valley Creamery, Inc. had failed to submit any report to the Market Administrator for the delivery period November 1 to 15, 1937.

### *Bills and Statements Rendered to Green Valley Creamery, Inc.*

310. The Market Administrator computed and rendered a bill to the Green Valley Creamery, Inc. for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to the Green Valley Creamery, Inc. were computed in the manner

described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to Green Valley Creamery, Inc. were similar in form to the bill rendered A. J. Robinson for the delivery period October 1 to 15, 1937, which is attached to this report as Exhibit 28.

311. The following table shows the amount for which bills and statements were rendered to Green Valley Creamery, Inc. for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings and Adjustments in Billings to the Green Valley Creamery, Inc., for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31, 1937.

		Producer Original	Settlement Adjustment	Marketing Services	Market Adminis- tration
August	1-15	\$610.63		\$22.45	\$22.45
August	16-31	807.04		23.66	23.66
September	1-15	863.59		23.63	23.63
September	16-30	920.91		24.44	24.44
October	1-15	873.17		22.76	22.76
October	16-31	676.25		22.48	22.48
November	1-15	314.68		15.67	15.67
November	16-30	324.84		18.52	18.52
December	1-15	310.94	\$39.02 (Dr.)	18.77	18.77
December	16-31	493.21	26.04 (Dr.)	20.36	20.36

312. As of January 26, 1938, the Green Valley Creamery, Inc. had made no payments to the Market Administrator in liquidation of the bills and statements rendered (Exs. 150-151).

UNITED STATES ET AL. V. A. J. MCNEIL &amp; SONS, No. 4540

*The Defendant*

313. The defendant A. J. McNeil & Sons, Inc. is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 177 Worcester Street in the town of Wellesley in said Commonwealth, where it operates as the Fairview Creamery.

314. A. J. McNeil & Sons, Inc. is engaged in the business of receiving, buying, processing, selling, and distributing milk and is a handler of milk as defined in the order. In each delivery period between August 1, 1937, and December 15, 1937, A. J. McNeil & Sons, Inc. reported to the Market Administrator that it purchased all of the milk which it handled from other handlers. All of the milk so purchased by A. J. McNeil & Sons, Inc. from other handlers was sold and distributed by it in the marketing area.

315. The following table shows the amount of milk purchased by A. J. McNeil & Sons, Inc. from other handlers and its disposition in each delivery period between August 1 and December 15, 1937.

## A. J. MCNEIL &amp; SONS, INC.

RECEIPTS OF MILK		DISPOSITION OF MILK	
		(in pounds)	

Period	From other handlers	Total	Sold for Class I Purposes in and outside marketing area
August 1-15	34,850	34,850	34,850
August 16-31	39,525	39,525	39,525
September 1-15	42,300	42,500	42,500
September 16-30	45,645	45,645	45,645
October 1-15	43,605	43,605	43,605
October 16-31	44,200	44,200	44,200
November 1-15	44,030	44,030	44,030
November 16-30	43,265	43,265	43,265
December 1-15	41,255	41,255	41,255

*Failure to Report*

316. As of November 30, 1937, A. J. McNeil & Sons, Inc. had failed and refused to submit any reports to the Market Administrator for any delivery period between August 1 and November 15, 1937. As of January 25, 1938, A. J. McNeil & Sons, Inc. failed and refused to file any report with the Market Administrator for the delivery period December 16-31, 1937, and the delivery period January 1-15, 1938.

UNITED STATES ET AL. v. W. P. ELLIOTT COMPANY, No. 4521

*The Defendant*

317. The defendant W. P. Elliott Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its present place of business at 90 Sanderson Avenue, in the city of Lynn in the Commonwealth of Massachusetts.

318. The W. P. Elliott Company is engaged in the business of receiving, buying, processing, selling, and distributing milk and is a handler of milk as defined in the order.

319. In each delivery period between August 1, 1937, and December 31, 1937, all of the producers delivering milk to the W. P. Elliott Company resided in the State of Maine. Practically all of the milk so received at the plant of the W. P. Elliott Company at Lynn, Massachusetts, was distributed and sold in the marketing area.

320. The W. P. Elliott Company from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside of the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area.

321. The following table shows the amount of milk purchased by the W. P. Elliott Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

## W. P. ELLIOTT CO.

Period	RECEIPTS OF MILK (in pounds)			DISPOSITION OF MILK (in pounds)		
	From producers	From other handlers	Total	Sold for Class I purposes in and out- side mar- keting area	Sold for Class II purposes in and out- side mar- keting area	
August 1-15	52,530		52,530	51,255	1,275	
August 16-31	53,125		53,125	51,765	1,360	
September 1-15	50,150		50,150	48,875	1,275	
September 16-30	50,320		50,320	49,045	1,275	
October 1-15	50,830	1,705	52,535	51,260	1,275	
October 16-31	54,230	1,190	55,420	54,060	1,360	
November 1-15	48,280	4,165	52,445	51,170	1,275	
November 16-30	47,685	5,100	52,785	51,510	1,275	
December 1-15	46,090	2,210	48,300	47,025	1,275	
December 16-31	53,975	595	54,570	53,210	1,360	

*Failure to Report*

322. As of November 30, 1937, the Market Administrator had received no reports from the W. P. Elliott Company for each delivery period between August 1, 1937, and November 15, 1937.

*Bills and Statements Rendered to the W. P. Elliott Company*

323. The Market Administrator computed and rendered a bill to the W. P. Elliott Company for each of the delivery periods, between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to the W. P. Elliott Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended if it be held that the W. P. Elliott Company is subject to the order. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. A copy of the bill rendered the W. P. Elliott Company for the period October 1-15, 1937, and which in form is typical of all bills rendered by the Administrator to the

W. P. Elliott Company is hereto annexed and marked Exhibit 29.

324. The following table shows the amounts for which bills and statements were rendered to the W. P. Elliott Company for each delivery period between August 1, 1937, and December 31, 1937.

Amounts of Billings to the W. P. Elliott Co. for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31, 1937.

		Producer Settlement	Marketing Services	Market Administration
August	1-15	\$267.03	\$10.51	\$10.51
August	16-31	254.73	10.63	10.63
September	1-15	350.89	10.03	10.03
September	16-30	360.90	10.06	10.06
October	1-15	370.69	10.17	10.17
October	16-31	308.58	10.85	10.85
November	1-15	178.57	9.66	9.66
November	16-30	151.73	9.54	9.54
December	1-15	155.53	9.22	9.22
December	16-31	255.92	10.80	10.80

325. As of January 26, 1938, the defendant W. P. Elliott Company had paid the following amounts in liquidation of the market administration charges billed to it for the delivery periods August 1 to December 31, 1937:

August	1 to 15	\$ 10.51
"	16 to 31	10.63
Sept.	1 to 15	10.03
"	16 to 30	10.06
Oct.	1 to 15	10.17
"	16 to 31	10.85
Nov.	1 to 15	9.66
"	16 to 30	9.54
Dec.	1 to 15	9.22
"	16 to 31	

326. As of January 26, 1938, the defendant W. P. Elliott Company had paid nothing in liquidation of the bills and statements rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937, except as shown in the table set forth above.

UNITED STATES ET. AL. V. F. W. LAROE AND JOHN E. BURR,  
No. 4529

*The Defendants*

327. Defendants F. W. Laroe and John E. Burr, doing business under the trade name Laroe and Burr, are citizens and residents of the Commonwealth of Massachusetts and reside in the town of Beverly therein and have their principal place of business at 14 King Terrace in said town and Commonwealth.

328. Defendants Laroe and Burr are handlers of milk as defined in the order and are engaged in the business of receiving, buying, processing, selling and distributing the milk.

329. In each delivery period in the month of August, 1937, defendants Laroe and Burr received part of their milk from producers residing in the Commonwealth of Massachusetts and the remainder of their milk from producers residing in the State of New Hampshire. In each delivery period between September 1, 1937, and December 31, 1937, all of the producers delivering milk to defendants Laroe and Burr resided in the Commonwealth of Massachusetts. The greater part of milk received by Laroe and Burr in each delivery period between August 1 and December 31, 1937, was distributed and sold by Laroe and Burr in the Boston marketing area.

330. Defendants Laroe and Burr from time to time purchase from other handlers and distribute and sell in the marketing area milk which has been received by such handlers from producers located outside of the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area.

331. The following table shows the amount of milk purchased by Laroe and Burr from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

## Master's Report

## LAROE &amp; BURR

Period	RECEIPTS OF MILK (in pounds)			DISPOSITION OF MILK (in pounds)		
	From producers	From other handlers	Total	Sold for Class I purposes in and out- side mar- keting area	Sold for Class II purposes in and out- side mar- keting area	
August 1-15	27,976	447	28,423	28,242	181	
August 16-31	31,089	998	32,087	30,143	1,944	
September 1-15	28,825	860	29,685	28,038	1,647	
September 16-30	29,525		29,525	27,586	1,939	
October 1-15	29,775		29,775	28,459	1,316	
October 16-31	30,615	688	31,303	29,738	1,565	
November 1-15	28,419	344	28,763	27,687	1,076	
November 16-30	28,616	215	28,831	27,047	1,784	
December 1-15	29,196		29,196	26,614	2,582	
December 16-31	31,736		31,736	27,683	4,053	

\* All reported disposed of in marketing area.

### Failure to Report

332. As of November 30, 1937, the Market Administrator had received no reports from defendants F. W. Laroe and John E. Burr, doing business under the trade name of Laroe and Burr, for each delivery period between August 1, 1937, and November 15, 1937.

### Bills and Statements Rendered to Laroe and Burr

333. The Market Administrator computed and rendered a bill to Laroe and Burr for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to Laroe and Burr were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to Laroe and Burr were similar in form to the bill which was rendered the W. P. Elliott Company for the delivery period October 1-15, 1937, and which is annexed to this report as Exhibit 29.

334. The following table shows the amounts for which the bills and statements were rendered to Laroe and Burr for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings to Laroe & Burr for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31, 1937

		Producer Settlement	Marketing Services	Market Administration
August	1-15	\$39.91	\$5.60	\$5.60
August	16-31	9.42	6.22	6.22
September	1-15	74.40	5.77	5.77
September	16-30	77.68	5.91	5.91
October	1-15	90.28	5.96	5.96
October	16-31	40.32	6.12	6.12
November	1-15	1.98 (Cr.)	5.68	5.68
November	16-30	14.06 (Cr.)	5.72	5.72
December	1-15	21.24 (Cr.)	5.84	5.84
December	16-31	21.89 (Cr.)	6.35	6.35

335. As of January 26, 1938, defendants Laroe and Burr had paid the following amounts in liquidation of the market administration charges billed to them for the delivery periods August 1 to December 31, 1937:

August	1 to 15	\$ 5.60
"	16 to 31	6.22
Sept:	1 to 15	5.77
"	16 to 30	5.91
Oct.	1 to 15	5.96
"	16 to 31	6.12
Nov.	1 to 15	5.68
"	16 to 30	5.72
Dec.	1 to 15	5.84
"	16 to 31	6.35

336. As of January 26, 1938, defendants Laroe and Burr had paid nothing in liquidation of the bills and statements rendered to them by the Market Administrator for the delivery periods between August 1 and December 31, 1937 except as shown in the table set forth above.

UNITED STATES ET AL. V. WHITCOMB FARMS, INC., No. 4536

*The Defendant*

337. The defendant Whitcomb Farms, Inc., is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its present place of business on King Street, in the town of Littleton in the Commonwealth of Massachusetts.

338. Whitcomb Farms, Inc. is engaged in the business of receiving, buying, processing, selling, and distributing milk and is a handler of milk as defined in the order.

339. In each delivery period between August 1, 1937, and December 31, 1937, all of the producers delivering milk to Whitcomb Farms, Inc. resided in the Commonwealth of Massachusetts. The greatest part of the milk so received at the plant of Whitcomb Farms, Inc. at Littleton, Massachusetts, was distributed and sold in the marketing area.

340. Whitcomb Farms, Inc. from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside of the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area.

341. The table on page 261 shows the amount of milk purchased by Whitcomb Farms, Inc. from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk.

*Failure to Report*

342. As of November 30, 1937, the Market Administrator had received no reports from Whitcomb Farms, Inc. for each delivery period between September 1, 1937, and November 15, 1937.

## WHITCOMB FARMS, INC.

## RECEIPT OF MILK (in pounds)

Period		From producers	From other handlers	Total
August	1-15	73,824	5,570	79,394
August	16-31	79,719	912	80,631
September	1-15	73,558	7,438	80,996
September	16-30	75,341	7,955	83,296
October	1-15	83,211	1,944	85,155
October	16-31	87,070	4,638	91,708
November	1-15	81,241	4,237	85,478
November	16-30	87,352	127	87,479
December	1-15	80,965	172	81,137
December	16-31	87,087	135	87,222

## DISPOSITION OF MILK (in pounds)

Period		Class I		Total Class I	Class II (in and outside marketing area)	Total
		Inside marketing area	Outside marketing area			
August	1-15	60,053	15,319	75,372	4,022	79,394
August	16-31	62,440	16,316	78,756	1,875	80,631
September	1-15	63,270	12,891	76,161	4,835	80,996
September	16-30	69,907	10,834	80,741	2,555	83,296
October	1-15	72,952	10,806	83,758	1,397	85,155
October	16-31	79,935	11,288	91,223	485	91,708
November	1-15	74,190	9,473	83,663	1,815	85,478
November	16-30	74,113	9,209	83,322	4,157	87,479
December	1-15	57,733	9,185	66,918	14,219	81,137
December	16-31	61,978	10,021	71,999	15,223	87,222

*Bills and Statements Rendered to Whitcomb Farms, Inc.*

343. The Market Administrator computed and rendered a bill to Whitcomb Farms, Inc., for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to Whitcomb Farms, Inc., were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to Whitcomb Farms, Inc., were similar in form to the bill rendered the W. P. Elliott Company for the delivery period October 1 to 15, 1937, which is attached to this report as Exhibit 29.

344. The following table shows the amounts for which bills and statements were rendered to Whitcomb Farms, Inc., for each delivery period between August 1, 1937, and December 31, 1937:

**Amounts of Billings to Whitcomb Farms, Inc., for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to December 31, 1937**

		Producer Settlement	Marketing Services	Market Administration
August	1-15	\$84.25	\$6.59	\$14.76
August	16-31	43.77	7.16	15.94
September	1-15	132.92	6.36	14.71
September	16-30	178.16	6.34	15.07
October	1-15	227.42	8.00	16.64
October	16-31	148.57	8.41	17.41
November	1-15	20.84	8.53	16.25
November	16-30	11.02 (Cr.)	7.84	17.38
December	1-15	137.29 (Cr.)	6.42	16.19
December	16-31	150.53	6.92	17.42

345. As of January 3, 1938, the defendant Whitcomb Farms, Inc., had paid nothing in liquidation of the bills and statements rendered to it by the Market Administrator. Subsequent to that date the defendant Whitcomb

Farms, Inc. paid to the Market Administrator all amounts for which bills and statements had been rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937.

UNITED STATES ET AL. V. MASON'S CREAMERY COMPANY,  
No. 4550

*The Defendant*

346. The defendant Mason's Creamery Company is a corporation organized and existing under the laws of the Commonwealth of Massachusetts and has its principal place of business at 32 Sydney Avenue, in the city of Lynn in the Commonwealth of Massachusetts.

347. Mason's Creamery Company is a handler of milk as defined in the order and is engaged in the business of receiving, buying, processing, selling, and distributing milk.

348. In each delivery period between August 1, 1937, and December 31, 1937, all of the producers delivering to Mason's Creamery Company resided in the state of Maine. All of the milk received from producers by Mason's Creamery Company was received at its plant in Lynn, Massachusetts, and the greater part of that milk was distributed and sold in the marketing area.

349. Mason's Creamery Company from time to time purchases from other handlers and distributes and sells in the marketing area milk which has been received by such handlers from producers located outside of the Commonwealth of Massachusetts and transported in interstate commerce into the marketing area.

350. The following table shows the amount of milk purchased by Mason's Creamery Company from producers and from other handlers in each of the delivery periods between August 1, 1937, and December 31, 1937, and the disposition which was made of the milk:

## RECEIPTS OF MILK (in pounds)

Period		From producers	From other handlers	Total
August	1-15	41,480	1,190	42,670
August	16-31	44,965	5,440	50,405
September	1-15	42,330	5,695	48,025
September	16-30	42,755	7,310	50,065
October	1-15	45,603	1,870	47,473
October	16-31	44,485	4,420	48,905
November	1-15	38,590	9,945	48,535
November	16-30	43,520	5,355	48,875
December	1-15	44,965	3,955	48,920
December	16-31	47,430	3,655	51,085

## DISPOSITION OF MILK (in pounds)

Period		Sold for Class I purposes Inside marketing area	Sold for Class II purposes (In and outside marketing area)
August	1-15	36,179	6,491
August	16-31	38,179	12,226
September	1-15	36,757	11,268
September	16-30	36,401	13,664
October	1-15	35,581	11,892
October	16-31	38,418	10,487
November	1-15	36,816	11,719
November	16-30	35,904	12,971
December	1-15	36,032	12,888
December	16-31	37,492	13,593

## Failure to Report

351. As of November 30, 1937, the Market Administrator had received no report from the defendant Mason's Creamery Company for the delivery periods September 16-30, October 1-15, October 16-31, and November 1-15, 1937.

*Bills and Statements Rendered to Mason's Creamery Company*

352. The Market Administrator computed and rendered a bill to Mason's Creamery Company for each of the delivery periods between August 1 and December 31, 1937. It is agreed by the parties that the amounts billed to Mason's Creamery Company were computed in the manner described in this report and that all computations not described herein were made in the manner prescribed by Order No. 4 as amended. No question is raised as to the arithmetic accuracy of the computations made by the Administrator. All bills rendered to Mason's Creamery Company were similar in form to the bill which was rendered the W. P. Elliott Company for the delivery period October 1-15, 1937, and which is annexed to this report as Exhibit 29.

353. The following table shows the amounts for which bills and statements were rendered to Mason's Creamery Company for each delivery period between August 1, 1937, and December 31, 1937:

Amounts of Billings to Forrest E. Mason, doing business as Mason's Creamery Co., for Producer Settlement, Marketing Services, and Market Administration by Periods from August 1, 1937, to and Including December 31, 1937

		Producer Settlement	Marketing Services	Market Administration
August	1-15	\$142.50	\$8.30	\$8.30
August	16-31	44.71	8.99	8.99
September	1-15	142.59	8.47	8.47
September	16-30	131.62	8.55	8.55
October	1-15	166.62	9.12	9.12
October	16-31	113.82	8.90	8.90
November	1-15	74.15	7.72	7.72
November	16-30	52.08	8.70	8.70
December	1-15	2.12	8.99	8.99
December	16-31	48.47	9.49	9.49

354. As of January 26, 1938, the defendant Mason's Creamery Company had paid the following amounts in liquidation of the Market Administration charges billed to it for the delivery periods August 1 to December 31, 1937:

August	1 to 15	\$ 8.30
"	16 to 31	8.99
Sept.	1 to 15	8.47
"	16 to 30	8.55
Oct.	1 to 15	9.12
"	16 to 31	8.90
Nov.	1 to 15	7.72
"	16 to 30	8.70
Dec.	1 to 15	8.99
"	16 to 31	9.49

355. As of January 26, 1938, the defendant Mason's Creamery Company had paid nothing in liquidation of the bills and statements rendered to it by the Market Administrator for the delivery periods August 1 to December 31, 1937, except as shown by the table set forth above.

Respectfully Submitted,

WILLIAM A. LOUGHLIN,  
*Master.*

January 27, 1939.

## CLERK'S CERTIFICATE.

UNITED STATES OF AMERICA,

DISTRICT OF MASSACHUSETTS, ss.

I, James S. Allen, Clerk of the District Court of the United States for the District of Massachusetts, do hereby certify that the three volumes, entitled as follows:

Volume I., Pleadings;

Volume II., Report of Special Master  
(Findings of Facts)

Volume III., Report of Special Master  
(Exhibits Appended)

constitute the transcript of the record on the appeals of the defendants, including true copies of such proofs, entries and papers on file as have been designated by the stipulation of parties as to the contents of the record on appeal, in the cause entitled

No. 4519, EQUITY DOCKET,

UNITED STATES OF AMERICA AND HENRY A. WALLACE,  
SECRETARY OF AGRICULTURE, PLAINTIFFS,

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS,

in said District Court determined.

In testimony whereof, I hereunto set my hand and affix the seal of said District Court, at Boston, in said District, this twenty-first day of March, A. D. 1939.

[SEAL]

JAMES S. ALLEN, Clerk.



## CLERK'S CERTIFICATE.

I, Arthur I. Charron, Clerk of the United States Circuit Court of Appeals for the First Circuit, certify that the three volumes, entitled as follows:

Volume I., Pleadings;

Volume II., Report of Special Master (Findings of Fact);

Volume III., Report of Special Master (Exhibits Appended)

this certificate being attached to each of said three volumes, contain and are a true copy of the record and all proceedings to, and including, March 22, 1939, in the cause in said court numbered and entitled, No. 3445.

H. P. HOOD & SONS, INC., ET AL., DEFENDANTS, APPELLANTS,

v.

UNITED STATES OF AMERICA ET AL., PLAINTIFFS, APPELLEE.

In testimony whereof, I hereunto set my hand and affix the seal of said United States Circuit Court of Appeals for the First Circuit, at Boston, in said First Circuit, this twenty-second day of March, A. D. 1939.

[SEAL]

ARTHUR I. CHARRON, *Clerk.*